

Witness: Gary Wilcox

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UNITED STATES DISTRICT COURT FOR THE SOUTHERN

DISTRICT OF TEXAS

HOUSTON DIVISION

-----:
ENBRIDGE ENERGY COMPANY, INC. AND :
ENBRIDGE MIDCOAST ENERGY, LP, F/K/A:
ENBRIDGE MIDCOAST ENERGY, INC., :
F/K/A MIDCOAST ENERGY RESOURCES, :
INC., :
Plaintiffs : Civil No.
v. : H-06-0657
UNITED STATES OF AMERICA :
Defendant :
-----:

Washington, D.C.

Monday, February 19, 2007

Deposition of:

GARY WILCOX,

called for oral examination by counsel for
Defendant, pursuant to notice, at the law Office
of Skadden Arps, Slate, Meagher & Flom, LLP,
1440 New York Avenue, N.W., Washington, D.C.,
before Sheri C. Stewart, Registered Professional
Reporter and Notary Public in and for the
District of Columbia, beginning at 10:03 a.m.,
when were present on behalf of the respective
parties:

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214-220-1122

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<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF PLAINTIFFS:</p> <p>4</p> <p>5 KARL S. STERN, ESQUIRE</p> <p>6 VINSON & ELKINS, LLP</p> <p>7 First City Tower</p> <p>8 1001 Fannin Street, Suite 2300</p> <p>9 Houston, TX 77002-6760</p> <p>10 (713)758-3828</p> <p>11</p> <p>12</p> <p>13 ON BEHALF OF DEFENDANT:</p> <p>14</p> <p>15 DAVID B. COFFIN, ESQUIRE</p> <p>16 U.S. DEPARTMENT OF JUSTICE - TAX DIVISION</p> <p>17 Maxus Energy Tower</p> <p>18 717 N. Harwood, Suite 400</p> <p>19 Dallas, TX 75201</p> <p>20 (214)880-9749</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1</p> <p>2 I N D E X</p> <p>3 WITNESS PAGE</p> <p>4 GARY WILCOX</p> <p>5 EXAMINATION BY MR. COFFIN 5</p> <p>6 EXAMINATION BY MR. STERN 200</p> <p>7 EXAMINATION BY MR. COFFIN 233</p> <p>8</p> <p>9 GOVERNMENT EXHIBITS</p> <p>10 NO. DESCRIPTION PAGE</p> <p>11 1 OPINION FROM PwC TO MIDCOAST 205</p> <p>12</p> <p>13</p> <p>14</p> <p>15 (*EXHIBITS ATTACHED TO TRANSCRIPT)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S (Continued)</p> <p>2</p> <p>3 ON BEHALF OF WITNESS GARY WILCOX:</p> <p>4</p> <p>5 ALBERT H. TURKUS, ESQUIRE</p> <p>6 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP</p> <p>7 1440 New York Avenue, N.W.</p> <p>8 Washington, D.C. 20005</p> <p>9 (202)371-7000</p> <p>10</p> <p>11</p> <p>12 ALSO PRESENT: JANA JORDAN W/ENBRIDGE, BRIAN M.</p> <p>13 DUNCAN W/SKADDEN ARPS, KEVIN G. CROKE W/IRS,</p> <p>14 YVONNE M. PETERS W/IRS</p> <p>15</p> <p>16</p> <p>17</p> <p>18 * * * * *</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1</p> <p>2 P R O C E E D I N G S</p> <p>3 Whereupon,</p> <p>4 GARY WILCOX,</p> <p>5 called as a witness, and having been first duly</p> <p>6 sworn, was examined and testified as follows</p> <p>7 EXAMINATION BY COUNSEL FOR THE GOVERNMENT</p> <p>8 BY MR. COFFIN:</p> <p>9 Q Please state your name for the record.</p> <p>10 A Gary Wilcox.</p> <p>11 Q Mr. Wilcox, what's your current</p> <p>12 address?</p> <p>13 A 4635 North 35th Street, Arlington,</p> <p>14 Virginia 22207.</p> <p>15 Q Mr. Wilcox, have you ever given your</p> <p>16 deposition before?</p> <p>17 A Yes.</p> <p>18 Q On how many occasions?</p> <p>19 A I believe in this case, once.</p> <p>20 Q That was actually an IRS interview,</p> <p>21 correct, rather than a deposition?</p> <p>22 A Right.</p>

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<p style="text-align: right;">Page 6</p> <p>1 Q But you've given a deposition before, 2 you understand the rules in a deposition or what I 3 call the ground rules? I'll just briefly go over 4 them with you if that's all right. 5 I'll ask the questions. I'll ask that 6 you answer truthfully and honestly. Don't 7 interrupt me and I'll try not to interrupt you. 8 Inevitably it will happen; we'll just try to do 9 our best to keep a clean record. 10 If you don't understand a question, 11 please ask me to restate it. Otherwise, if you 12 answer, I will assume that you understood the 13 question. Okay? 14 If you need a break at any time, just 15 let me know. 16 Mr. Turkus may be objecting to some of 17 my questions, but I'll ask that you answer unless 18 he instructs you not to answer. 19 You understand those rules? 20 A Yes. 21 Q Okay. Do you have any medical 22 condition, or are you on any medication that would</p>	<p style="text-align: right;">Page 8</p> <p>1 maintain a tax practice of my own. 2 Q We talked about your educational 3 history briefly before the deposition began. 4 Could you tell me where you graduated 5 high school, and then from there state for the 6 record your educational history? 7 A Graduated from L.D. Bell High School in 8 Hurst, Texas. Undergrad, I graduated from Texas 9 Tech in 1981. For law school, I graduated from 10 University of Oklahoma in 1984, and then I 11 received an LLM in tax from NYU in 1986. 12 Q You're a licensed attorney currently, 13 correct? 14 A Yes. 15 Q In what jurisdictions? 16 A D.C., Pennsylvania, as well as Oklahoma 17 and North Carolina. 18 Q And you passed the certified public 19 accountant's exam; is that correct? 20 A Yes. 21 Q You maintain your permit to practice? 22 A No.</p>
<p style="text-align: right;">Page 7</p> <p>1 prohibit you from understanding the questions 2 today? 3 A No. 4 Q Where are you currently employed? 5 A Morgan, Lewis & Bockius. 6 Q Spell that out, please. 7 A Morgan, M-O-R-G-A-N, Lewis, L-E-W-I-S, 8 and Bockius, B-O-C-K-I-U-S. 9 Q Is your office here in Washington, 10 D.C.? 11 A I have an office in D.C. and in 12 Philadelphia. 13 Q All right. How long have you been 14 employed by Morgan, Lewis? 15 A Almost three years. Since leaving 16 government. 17 Q You left the government in 2004; is 18 that correct? 19 A Yes. 20 Q Okay. And what are your current 21 responsibilities with Morgan, Lewis? 22 A I manage the firm's tax practice, and I</p>	<p style="text-align: right;">Page 9</p> <p>1 Q In what state did you take the exam? 2 A Oklahoma. 3 Q And when did you get your CPA 4 certificate, what year? 5 A Would have been 1984. 6 Q That's the same year you graduated from 7 law school? 8 A Yes. 9 Q Have you any other professional 10 licenses or any kind of accreditations? 11 A No, I don't believe so, other than 12 various bar associations. 13 Q And give me your employment history 14 beginning with when you graduated from law school. 15 A First: Doerner, Stuart in Tulsa, 16 Oklahoma. 17 Q That's a law firm? 18 A D-O-E-R-N-E-R. Stuart is S-T-U-A-R-T. 19 Q That's a law firm in Tulsa? 20 A Yes, law firm. 21 Q And you were there, you said, for a 22 year?</p>

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<p>1 A I was there three years but, during 2 that period, I went to NYU. 3 MR. STERN: Can I interrupt, David? 4 Can we have the same stipulations for Gary's 5 deposition -- Mr. Wilcox's deposition as we 6 had for Snyder's? We can use the interview 7 transcript at the trial and it may speed 8 things up as far as some of this background 9 information. 10 MR. COFFIN: Sure, sure. 11 MR. STERN: Okay. 12 MR. COFFIN: Um-hum. 13 A Should I keep going? 14 BY MR. COFFIN: 15 Q Yes, please. 16 A Okay. Second: Skadden, Arps in 17 Washington, D.C., for four years. 18 You want a complete history? 19 Q Well -- 20 A Or just highlights? 21 Q Just keep going and I'll stop you. 22 A Okay. Third: Morgan, Lewis & Bockius</p>	<p>1 Q Have you reviewed anything to prepare 2 for this deposition today? 3 A Yes. 4 Q And I know I sent late last week or -- 5 late last week a disk of documents to your 6 counsel. Was he able to get those to you? 7 A Yes. 8 Q That would have been Friday or so. 9 Friday you received them? 10 A Yes, Friday. 11 Q I apologize for getting those to you 12 late. 13 You reviewed those documents, I assume? 14 A I have. 15 Q Okay. 16 A Looked at them. 17 Q Okay. Did you review anything else? 18 A I reviewed the transcript of my prior 19 deposition. 20 Q Your interview with the IRS? 21 A Interview. 22 Q How much time did you spend reviewing</p>
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<p>1 for five years. 2 And then IRS deputy chief counsel for 3 two years. 4 Q That's an appointed position; is that 5 correct? 6 A No. 7 Q No? Okay. Who did you serve under? 8 A B. John Williams. 9 Q Did you know Mr. Williams prior to 10 getting that job? 11 A Yes. 12 Q How did you know him? 13 A We were partners at Morgan, Lewis. 14 Q Okay. And you left the IRS? 15 A February 2004. 16 Q And went back to Morgan, Lewis? 17 A Yes. 18 Q Why did you leave IRS deputy chief 19 counsel? 20 A I believe that I had accomplished my 21 goals in taking that position and had a desire to 22 return to private practice.</p>	<p>1 those documents that I sent over? Just roughly. 2 An hour, two hours? 3 A An hour to two hours. 4 Q Okay. Have you been advised or 5 requested to appear in the trial of this matter 6 and to testify on behalf of the plaintiff, 7 Enbridge Midcoast? 8 A I have. 9 Q Have you been advised or requested to 10 appear at the trial of this matter, this lawsuit? 11 A Not that I'm aware of. I believe I've 12 only been requested to give this deposition. 13 Q When were you employed with 14 PricewaterhouseCoopers? 15 A I forgot to mention that. Sorry. 16 Q That's okay. 17 A I joined, I left Morgan, Lewis in 18 March 1997 and was with PwC from April '97 until 19 February 2002. 20 Q In February 2002 is when you went to 21 the IRS? 22 A Yes.</p>

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<p style="text-align: right;">Page 14</p> <p>1 Q And what were your responsibilities 2 when you worked at PwC? 3 A I advised clients and practice offices 4 on the tax aspects of various transactions. 5 Q And you worked in the national office 6 for PwC; is that correct? 7 A Well, I joined Coopers, and Coopers 8 merged with Price Waterhouse which became PwC 9 about a year or two after I had joined Coopers. 10 And officially, I was co-leader of the WNTS 11 mergers and acquisitions practice. 12 Q What does WNTS stand for? 13 A Washington National Tax Services. 14 Q Were you a partner with PwC since 15 joining with them in March or April '97? 16 A Yes. 17 MR. TURKUS: Just for the record, he 18 said he joined Coopers and then he came to 19 PwC. 20 MR. COFFIN: Okay. 21 BY MR. COFFIN: 22 Q Did your duties change when PwC merged</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. TURKUS: You asked two different 2 questions. 3 BY MR. COFFIN: 4 Q Okay. A practice office typically had 5 some tax expertise there; is that correct? 6 A (Nods yes.) 7 Q So at what point would they deem it 8 necessary to contact you in the national office? 9 A I think -- 10 MR. TURKUS: Objection to the form of 11 the question. 12 A I don't know that I'm in a position to 13 say as a general rule when tax people in the 14 practice offices called the national office. I 15 believe, for the most part, it was left up to 16 their judgment and knowledge of, you know, the 17 kind of expertise that the national office could 18 bring to them. 19 BY MR. COFFIN: 20 Q Did you become familiar with Midcoast 21 Energy Resources, Inc., in 1999? 22 A I recall having done previous work for</p>
<p style="text-align: right;">Page 15</p> <p>1 with Coopers? 2 A The size of our group doubled and so my 3 responsibilities were greater. And I had been 4 before, immediately before the merger, leader of 5 Coopers national mergers and acquisitions practice 6 and, after the merger, I became a co-leader of 7 PwC's mergers and acquisitions practice. 8 Q And you mentioned your duties were 9 advising clients and practice offices of the tax 10 aspects of various transactions. 11 What kind of transactions could those 12 be? 13 A Mergers, acquisitions, spinoffs, joint 14 ventures. Really any kind of business 15 transaction. 16 Q At what point would a practice office 17 call you to enlist your services? What kind of 18 transaction? 19 MR. TURKUS: Just for clarity, do you 20 want him to talk about the kind of 21 transactions? 22 MR. COFFIN: Well, I mean --</p>	<p style="text-align: right;">Page 17</p> <p>1 Midcoast Energy. I don't recall whether it was in 2 1999 or earlier. 3 Q Do you recall if you worked on more 4 than one engagement with Midcoast Energy 5 Resources, Inc.? 6 MR. TURKUS: Objection to the form of 7 the question. 8 Do you mean more than one project or 9 more than one engagement? Because I don't 10 think he's testified about how many 11 engagements there were. 12 MR. COFFIN: Okay. 13 BY MR. COFFIN: 14 Q More than one project, then? 15 A I only recall one other project. I 16 don't recall exactly what it was, but it was a 17 different project than the one involved here. 18 Q You recall if it was before or after 19 the project involved here? 20 A It was before. 21 Q So you had some familiarity with 22 Midcoast before the project involved here which</p>

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<p style="text-align: right;">Page 18</p> <p>1 occurred in 1999; is that right?</p> <p>2 A Well, I had given tax advice to the</p> <p>3 practice office in connection with Midcoast,</p> <p>4 but -- I don't know how else to answer that</p> <p>5 question in terms of my familiarity with the</p> <p>6 company.</p> <p>7 Q Okay. Do you recall if you'd spoken to</p> <p>8 anybody at Midcoast before 1999?</p> <p>9 A I don't recall. I believe that I had</p> <p>10 dealt only with the PwC practice office people who</p> <p>11 in turn dealt with the company.</p> <p>12 Q I don't know if you mentioned or you</p> <p>13 testified, do you recall the subject matter of</p> <p>14 what that earlier project was?</p> <p>15 A No, I don't.</p> <p>16 Q But you do recall the project at issue</p> <p>17 here. Do you recall it occurred in 1999?</p> <p>18 A Yes.</p> <p>19 Q Okay. And Midcoast was bidding on the</p> <p>20 purchase of the stock of The Bishop Group</p> <p>21 initially in the transaction; is that correct?</p> <p>22 A That's what I remember.</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. TURKUS: Objection to the form of</p> <p>2 the question.</p> <p>3 A They called me about a potential</p> <p>4 acquisition by Midcoast.</p> <p>5 BY MR. COFFIN:</p> <p>6 Q And did they request that you perform</p> <p>7 some kind of services at that time?</p> <p>8 A I don't recall exactly what was</p> <p>9 requested. As I just said, they called me to</p> <p>10 discuss a potential acquisition by Midcoast. That</p> <p>11 call was similar to many calls that I would</p> <p>12 receive from practice offices who would ask me</p> <p>13 about my views on issues or transactions.</p> <p>14 Q And then what happened, do you recall,</p> <p>15 after that initial call as far as how you got</p> <p>16 further involved in the transaction?</p> <p>17 A I don't recall the exact sequence of</p> <p>18 what happened when. I'm happy to answer questions</p> <p>19 if you want to give me something more specific.</p> <p>20 Q Sure.</p> <p>21 A I do recall traveling to Kansas City.</p> <p>22 I don't remember the exact date of the meeting,</p>
<p style="text-align: right;">Page 19</p> <p>1 Q Okay. How did you get involved with</p> <p>2 that particular project?</p> <p>3 A Do you mean when was I first contacted?</p> <p>4 Q Yes.</p> <p>5 A I believe it was in early September,</p> <p>6 and I don't have the exact date. It was during, I</p> <p>7 believe, the first or perhaps second week of</p> <p>8 September.</p> <p>9 Q Who contacted you?</p> <p>10 A I believe it was Dennis McErlean and</p> <p>11 Tom Palmisano.</p> <p>12 Q Now, Tom Palmisano was a tax man, is</p> <p>13 that correct, at the time?</p> <p>14 A Yes.</p> <p>15 Q With the local practice in Houston?</p> <p>16 A Yes.</p> <p>17 Q Of PwC, right?</p> <p>18 And who was Dennis McErlean?</p> <p>19 A Dennis was a tax partner also in the</p> <p>20 Houston office.</p> <p>21 Q You recall why they requested your</p> <p>22 services at that time?</p>	<p style="text-align: right;">Page 21</p> <p>1 but I remember traveling to Kansas City shortly</p> <p>2 after Dennis and Tom called me.</p> <p>3 Q Looking back, can you summarize what</p> <p>4 your responsibilities were with regard to that</p> <p>5 project?</p> <p>6 MR. TURKUS: You mean overall or over</p> <p>7 the entire time he was involved?</p> <p>8 MR. COFFIN: Yeah, just generally.</p> <p>9 A Generally, it was to provide tax advice</p> <p>10 to Midcoast in connection with the acquisition.</p> <p>11 BY MR. COFFIN:</p> <p>12 Q And the acquisition of the pipeline</p> <p>13 assets?</p> <p>14 A Correct.</p> <p>15 Q Did you have any expertise at the time</p> <p>16 in the energy field or pipeline industry?</p> <p>17 A No, but it was quite common to give tax</p> <p>18 advice in transactions even where the advisor does</p> <p>19 not have specific expertise of that industry</p> <p>20 because the issues are quite common.</p> <p>21 Q Let's turn to Government Exhibit, in</p> <p>22 the binder there, 26. This is a facsimile from</p>

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<p style="text-align: right;">Page 22</p> <p>1 Fortrend International, LLC, to Mr. Bruce 2 Schneider of E&Y and cc to Tom Palmisano; is that 3 correct? 4 MR. TURKUS: Well, Mr. Coffin, that's 5 what it purports to be. I'm not sure the 6 witness can authenticate it for you. 7 MR. COFFIN: Okay. I don't want him to 8 authenticate it. 9 MR. TURKUS: Well, you asked him, "Is 10 it correct?" 11 BY MR. COFFIN: 12 Q Is that what it appears to be? 13 A It appears to be a fax from Fortrend to 14 Bruce Snyder, Tom Palmisano. Have you ever seen 15 this fax? 16 MR. TURKUS: Prior to my providing a 17 copy to him last week? 18 MR. COFFIN: Yes. 19 BY MR. COFFIN: 20 Q Back in 1999, did you see this 21 facsimile? 22 A I do not recall seeing this fax prior</p>	<p style="text-align: right;">Page 24</p> <p>1 I did. 2 Q Okay. Did you ever meet with anybody 3 from Fortrend personally subsequent to August of 4 1999? 5 A Yes. 6 Q Who did you meet with? 7 A Craig Hoffman. 8 Q Okay. Who introduced you to Fortrend? 9 MR. TURKUS: Objection to the form of 10 the question. 11 BY THE WITNESS: 12 Q I'll back up. 13 How did you become familiar with 14 Fortrend? 15 A From my initial conversation with 16 Dennis McErlean and Tom Palmisano. 17 Q And do you recall what they mentioned 18 to you about Fortrend? 19 A Not specifically. 20 Q Okay. How about generally? 21 A That Fortrend was an entity that could 22 possibly enter the bidding process as a purchaser</p>
<p style="text-align: right;">Page 23</p> <p>1 to Friday of last week. 2 Q Okay. How about the pages following? 3 A I do recall seeing the next two pages 4 which describe Fortrend and several of the 5 principals. 6 Q Okay. And the date of this fax is 7 August 30, 1999. Had you heard of Fortrend in 8 1999, prior to this transaction? 9 A I do not recall having heard of 10 Fortrend prior to this transaction. 11 Q How about you eventually became 12 familiar with some of the principals of Fortrend, 13 didn't you, during 1999? 14 A Yes. 15 Q On the third page of this exhibit, it 16 lists Frederick Forrester and Jeffrey Furman. 17 Were you familiar with those two individuals 18 before being involved with the project at issue? 19 A No. And I don't believe I ever spoke 20 with Frederick Forrester. 21 Q Did you speak with Mr. Furman? 22 A I did. I don't recall exactly when but</p>	<p style="text-align: right;">Page 25</p> <p>1 of the stock of Bishop Group. 2 Q Did you do any due diligence with 3 regard to Fortrend? 4 MR. TURKUS: Objection to the form of 5 the question. 6 A I'm going to have to ask you what you 7 mean by "due diligence." 8 BY MR. COFFIN: 9 Q Okay. In your practice, isn't due 10 diligence a term of art as far as doing background 11 information or research on potential parties to 12 transactions? 13 A I believe that when you represent a 14 company that is making an acquisition, it's common 15 for the buyer to do the financial and tax due 16 diligence of the target company. 17 In this case, Midcoast was buying 18 partnership interests that were owned, as I 19 recall, by Bishop Group Corporation. I have no 20 doubt that due diligence was done on the assets 21 that were being purchased, but it was not part of 22 what I was asked to do.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q So you didn't do any of the due 2 diligence on Fortrend then? 3 MR. TURKUS: Objection to the form of 4 the question. 5 He's talking about due diligence of the 6 assets. 7 A I was talking about due diligence in 8 general. 9 In terms of due diligence on Fortrend, 10 I recall that I made some general inquiries as to 11 Fortrend's experience in acquiring the stock of 12 companies, but I don't recall anything specific. 13 Q I'm going to ask you to fast forward to 14 Government Exhibit 160, and the only reason I'm 15 doing this is I'm trying to do things in 16 chronological order. You might pull that out. 17 Now, Mr. Wilcox, this is a memorandum 18 on PricewaterhouseCoopers letterhead; is that 19 correct? Or memohead; is that right? 20 A Yes. 21 Q And it's a draft, memorandum draft, 22 December 14, 1999, and it's to the Midcoast file</p>	<p style="text-align: right;">Page 28</p> <p>1 MR. TURKUS: Objection to the form of 2 the question. 3 A I really do not recall. The Washington 4 and the New York offices frequently worked 5 together. But, beyond that, I don't recall. 6 BY MR. COFFIN: 7 Q Would Ms. Coffey have been familiar 8 with the facts as they occurred in this draft 9 memorandum, or is that something you would supply 10 to her? 11 MR. TURKUS: Objection to the form of 12 the question. 13 A Ms. Coffey would have been familiar 14 with the facts as they were supplied to her by me 15 and possibly Tom Palmisano. 16 Q And how did you gain an understanding 17 of the facts of this memorandum? 18 MR. TURKUS: Objection to the form of 19 the question. 20 Are there specific facts that you're 21 referring to, Mr. Coffin? Because it seems 22 to me that it's impossible to answer that</p>
<p style="text-align: right;">Page 27</p> <p>1 from Gary Wilcox and Catherine Coffey; is that 2 correct? 3 A Correct. 4 Q Who is Catherine Coffey? 5 A She was a manager or a senior 6 manager -- I don't recall which -- in PwC's New 7 York office. 8 Q What was her role in the preparation of 9 this memorandum? 10 A It was to assist me in the research and 11 analysis of the tax issues. 12 Q Was she working under your direction? 13 A Yes. And under the direction of Ian 14 Schacter. 15 Q Who's Mr. Schacter? 16 A Mr. Schacter was, and I believe still 17 is, the leader of the -- of PwC's New York mergers 18 and acquisitions practice. 19 Q Why would you or PwC choose Ms. Coffey 20 to assist you rather than having somebody in the 21 Washington, D.C., national office assist you in 22 this?</p>	<p style="text-align: right;">Page 29</p> <p>1 question as to all of the many facts. 2 MR. COFFIN: Just in general. We can 3 go through the facts, but just in general. 4 BY MR. COFFIN: 5 Q I mean, you were in Washington, D.C., 6 and the transaction was occurring in Houston and 7 Kansas City; is that right? 8 A This was a several hundred million 9 dollar transaction. PwC was engaged to advise on 10 the tax aspects of the transaction. So I was very 11 involved throughout the course of the transaction 12 with the progress of the transaction and the 13 various details. 14 Q Okay. Just generally speaking, why do 15 you prepare a draft like this or a memorandum like 16 this? 17 MR. TURKUS: Is the question why this 18 document was prepared, or why documents like 19 this are generally prepared? 20 MR. COFFIN: Documents like this. 21 A Documents like this are prepared to 22 document and support the tax advice given to the</p>

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<p style="text-align: right;">Page 30</p> <p>1 client and, ultimately, the client's tax position. 2 BY MR. COFFIN: 3 Q Turn to the second page of the 4 memorandum, the first paragraph at the top. The 5 last sentence, it says, "While Midcoast was aware 6 of Langley's stated preference throughout the 7 negotiations, it had hoped an asset deal could be 8 negotiated." 9 Do you know why that was? 10 MR. TURKUS: Excuse me. Why what was? 11 MR. COFFIN: Why Midcoast hoped an 12 asset deal could be negotiated. 13 MR. TURKUS: Objection. Lack of 14 foundation. 15 A I don't recall specifically other than 16 the obvious tax benefit to an acquirer of assets 17 as opposed to an acquirer of stock. And Midcoast 18 was in a competitive bidding process and I don't 19 recall specifically but as I'm, you know, I'm 20 speculating now, the benefit of a tax -- of an 21 asset purchase would be greater to them than a 22 stock purchase. That's typical of all</p>	<p style="text-align: right;">Page 32</p> <p>1 desires to buy assets so that the buyer can 2 depreciate the cost of the assets. 3 Q The next sentence on Paragraph 3 of 4 that page says, "On August 27, 1999, Midcoast and 5 PricewaterhouseCoopers contacted Fortrend 6 International." 7 Is that a correct statement? 8 MR. TURKUS: Is what a correct 9 statement? Is that what the document says or 10 is that a fact? 11 MR. COFFIN: Is that a fact. I'm 12 sorry. 13 MR. TURKUS: I don't think you've shown 14 that the witness has a foundation to answer 15 that question. 16 MR. COFFIN: He said earlier he was 17 heavily involved in negotiations and in these 18 transactions. 19 MR. TURKUS: But he also said earlier, 20 Mr. Coffin, the first time he became involved 21 was in September. So if you're asking him 22 did someone tell him that, that's one thing.</p>
<p style="text-align: right;">Page 31</p> <p>1 transactions. 2 BY MR. COFFIN: 3 Q The third paragraph says, Midcoast 4 independently pursued the so-called Midco 5 transaction as a structural alternative." 6 What's the Midco transaction? 7 A That is a reference to a transaction in 8 which stock is sold to a company and that company, 9 in turn, sells the assets to a different company. 10 Q Is it structured that way for tax 11 purposes? 12 MR. STERN: Objection, form. 13 MR. TURKUS: Are you talking again, 14 Mr. Coffin, generally or with regard to a 15 specific transaction? 16 MR. COFFIN: Generally. 17 A Yes, sometimes that structure is used 18 to gain a tax advantage. 19 BY MR. COFFIN: 20 Q Can you comment on how the tax 21 advantage is gained? 22 A From the buyer's standpoint, the buyer</p>	<p style="text-align: right;">Page 33</p> <p>1 But in terms of foundation, you haven't 2 established a foundation for him to answer 3 that question. 4 MR. COFFIN: Well, this is his memo. 5 MR. TURKUS: That's correct, but you're 6 asking him is this a fact and he already said 7 that his first involvement in this 8 transaction was September. 9 MR. COFFIN: Well, how did he know to 10 write this memo? 11 MR. TURKUS: That's right. That's 12 what's called laying a foundation. You have 13 to ask the foundation question. 14 MR. COFFIN: Okay. 15 BY MR. COFFIN: 16 Q Where did you get these facts that you 17 put into this memo? 18 MR. TURKUS: Which facts? 19 MR. COFFIN: All of them. 20 MR. TURKUS: He's already answered that 21 question. But you're asking now about a 22 specific question. You're asking is it a</p>

9 (Pages 30 to 33)

Witness: Gary Wilcox

<p style="text-align: right;">Page 34</p> <p>1 fact; then you have to ask him how he learned 2 about that fact, or that statement. 3 BY MR. COFFIN: 4 Q Well, how did you learn about that fact 5 on August 27, 1999, Midcoast and 6 PricewaterhouseCoopers contacted Fortrend 7 International, LLC? 8 MR. TURKUS: If you recall. 9 A I recall that I was told by Tom 10 Palmisano and/or Dennis McErlean that they had 11 contacted Fortrend. 12 BY MR. COFFIN: 13 Q In the next sentence, it says, "Over 14 the next several weeks, several conversations took 15 place among Fortrend, Midcoast, PwC and Ernst & 16 Young regarding the viability of the Midco 17 alternative." 18 Why is it characterized as a Midco 19 alternative there? 20 MR. TURKUS: Objection to the form of 21 the question. 22 A I really don't know what you're asking.</p>	<p style="text-align: right;">Page 36</p> <p>1 Robert and one or two other Midcoast 2 representatives. I'm not recalling their names 3 now. There was Dennis Langley and several of his 4 representatives, as well as legal counsel were 5 there also. This meeting is in the offices of 6 Bryan Cave, Langley's counsel. 7 Q Who from Fortrend was there? 8 MR. TURKUS: Objection to the form of 9 the question. 10 I don't think he said yesterday that 11 anyone was present from Fortrend. 12 BY MR. COFFIN: 13 Q Oh, I'm sorry. I misread the fax. 14 Was anybody from Fortrend there? 15 A No. 16 Q Do you recall what Langley's -- or what 17 was discussed at the meeting? 18 A At which meeting? 19 Q Your meeting with -- on September 13, 20 1999. 21 A Are you asking me to confirm what was 22 written in this memo or -- because I believe the</p>
<p style="text-align: right;">Page 35</p> <p>1 I explained earlier what the reference to a Midco 2 transaction was. I've made reference to it again 3 here, but I'm not sure exactly what you're asking. 4 BY MR. COFFIN: 5 Q As an alternative you made reference to 6 it here. So it's an alternative to what? 7 A You asked me earlier was Midcoast -- 8 had Midcoast been involved in the bidding process, 9 and I answered yes. So the alternative would have 10 been for Midcoast to acquire the stock of Bishop 11 Group directly from Langley. 12 Q In the fifth paragraph, it says, "On 13 September 13, 1999, PwC met with Midcoast and 14 Kansas City to determine whether Fortrend should 15 be invited to enter the bidding process." 16 Did you attend that meeting? 17 A Yes. 18 Q Who else was at the meeting, if you 19 recall? 20 A From PwC, Tom Palmisano. I don't 21 recall if Dennis McErlean was there. In fact, I 22 believe he was. From Midcoast, I believe Richard</p>	<p style="text-align: right;">Page 37</p> <p>1 memo describes some of the discussions. 2 Q Well, let me ask you this: Was this 3 memo, was it ever finalized? Because it shows to 4 be a draft of December 14, 1999. 5 A Not that I recall. 6 Q The last sentence of that Paragraph 5, 7 "PwC did not witness any direct discussions 8 between Midcoast, Langley, or its representative 9 at this meeting." 10 Can you tell what the relevance of that 11 statement is? 12 MR. TURKUS: Objection to the form of 13 the question. 14 A I'm sorry. Can you repeat the 15 question? 16 BY MR. COFFIN: 17 Q What's the relevance of that statement? 18 MR. STERN: Objection to form. 19 A Relevance? Relevant to what? 20 BY MR. COFFIN: 21 Q Well, I assume you put it in the 22 memorandum because it had some relevance.</p>

10 (Pages 34 to 37)

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Witness: Gary Wilcox

<p style="text-align: right;">Page 38</p> <p>1 MR. TURKUS: Objection to the statement 2 of counsel. 3 Is that a question? 4 MR. COFFIN: Um-hum. 5 MR. TURKUS: What's the question? 6 MR. COFFIN: What's the relevance of 7 the last statement in Paragraph 5? 8 MR. TURKUS: He's asked you to clarify 9 the question. 10 BY MR. COFFIN: 11 Q Why would it be relevant to this 12 memorandum? 13 A This section of the memorandum was 14 intended to describe the course of this 15 transaction in detail. This facts section 16 describes in detail the negotiations that took 17 place between Midcoast and Fortrend, it describes 18 negotiations that took place between Fortrend and 19 Langley. This was a statement that was made in 20 order to illustrate that, during that meeting on 21 September 13, '99, it did not appear that there 22 were negotiations taking place directly between</p>	<p style="text-align: right;">Page 40</p> <p>1 answered. 2 BY MR. COFFIN: 3 Q In Kansas City? 4 MR. TURKUS: That's already been 5 answered. 6 MR. COFFIN: I don't think it has been. 7 MR. TURKUS: Yes, it has. He can 8 answer it again, but he did answer. 9 MR. COFFIN: Okay. 10 A No one from Fortrend was present in 11 Kansas City. 12 BY MR. COFFIN: 13 Q Okay. About the third line in 14 Paragraph 5 it says, "PwC discussed with 15 Fortrend." 16 Do you see that sentence? 17 A Yes. 18 Q Did that discussion take place on 19 September 13, 1999, or some other time? 20 A I believe it took place on 21 September 13th. I don't recall whether that 22 meeting was one day or two days. It might have</p>
<p style="text-align: right;">Page 39</p> <p>1 Midcoast and Langley. 2 Q Was that important at the time? 3 MR. TURKUS: Objection to the form of 4 the question. 5 Important to whom? 6 MR. COFFIN: To PwC. 7 MR. TURKUS: At what time? The time of 8 September 13, '99? 9 MR. COFFIN: Yes. 10 MR. TURKUS: Or at the time the 11 document was written? At what time? 12 MR. COFFIN: September 13, 1999. 13 MR. TURKUS: Objection to the form of 14 the question. 15 A I would say that it was advisable, if 16 this so-called Midco alternative was to be 17 pursued, that Midcoast begin to limit the extent 18 of direct negotiations with Langley. 19 BY MR. COFFIN: 20 Q Okay. During that meeting, was 21 Fortrend present? 22 MR. TURKUS: Objection. Asked and</p>	<p style="text-align: right;">Page 41</p> <p>1 been the 14th, but I believe it was the 13th. 2 Q Do you recall how -- I assume you're 3 aware you became involved in the transaction at 4 least by September 13th of 1999, correct? 5 MR. TURKUS: I'm sorry. I'm just 6 confused about the question. Is it does he 7 recall, or you assume, or -- 8 MR. COFFIN: I assume, because this 9 memorandum says they had a meeting on 10 September 13th of '99. 11 MR. TURKUS: He already said he was at 12 the meeting. What's the question? 13 MR. COFFIN: I assume he was aware then 14 of the Midcoast transaction at that meeting, 15 correct? 16 MR. TURKUS: The Midcoast transaction? 17 MR. COFFIN: This transaction. 18 A I'm going to have to ask you to clarify 19 what you mean by "the Midcoast transaction." 20 BY MR. COFFIN: 21 Q Well, how about the Midcoast project as 22 you were describing earlier. You're aware -- my</p>

11 (Pages 38 to 41)

Witness: Gary Wilcox

<p style="text-align: right;">Page 42</p> <p>1 question is more how much earlier, when you went 2 to Kansas City on this meeting -- I'm sorry, 3 September 17, 1999. 4 MR. TURKUS: September 17th? 5 MR. COFFIN: Yeah. 6 MR. TURKUS: 13th? 7 MR. COFFIN: Let me -- give me a second 8 here. 9 MR. TURKUS: I'm confused. 10 MR. COFFIN: I'm confused, too. 11 BY MR. COFFIN: 12 Q Yes, on September 13, 1999, Paragraph 5 13 on page 2. PwC met with Midcoast in Kansas City, 14 and you said you were there. 15 Do you recall how much earlier you 16 would have become aware of the transaction? 17 MR. TURKUS: Objection. Asked and 18 answered. 19 He said earlier he thought he became 20 aware of it in the first or second week of 21 September. That was his testimony. 22</p>	<p style="text-align: right;">Page 44</p> <p>1 Q Do you know if anybody from PwC would 2 have been involved in that presentation? 3 A I do not believe so. 4 Q And the second paragraph says, "From 5 that point forward, Fortrend began having direct 6 and frequent discussions directly with Langley's 7 representative, Steve Korb, and Langley's outside 8 counsel, Jim Pryde of Bryan Cave of Kansas City." 9 Did PwC have any involvement with -- 10 anybody from PwC have any involvement with -- in 11 those direct and frequent discussions? 12 MR. TURKUS: Objection to the form of 13 the question. 14 A There may have been an occasion where 15 PwC was either included on an e-mail 16 communication, but I do not recall phone 17 conversations in which PwC, Fortrend, and 18 Langley's counsel participated together. It may 19 have happened -- and I'm willing to have my 20 recollection refreshed with documents -- but I 21 don't recall right now. 22 I should state for the record that PwC</p>
<p style="text-align: right;">Page 43</p> <p>1 BY MR. COFFIN: 2 Q Okay. That's your best recollection? 3 A My best recollection is that, as I 4 said, I was called by Tom Palmisano and/or Dennis 5 McErlean during the first or second week of 6 September. That was the first time I was aware of 7 any aspect of this transaction. 8 Q Turn the page to page 3 of Exhibit 160. 9 The first paragraph there discusses that Fortrend 10 had received a private placement memorandum and 11 other opportunities. 12 Do you recall how you would have been 13 aware or advised of that fact? 14 A No, I do not recall whether I learned 15 that directly from Fortrend or from some other 16 person. 17 Q Okay. The last sentence in that 18 paragraph says, "Presentation was made by 19 telephone to Fortrend on September 16, 1999." 20 Were you involved in that presentation 21 at all? 22 A No, I was not involved in that at all.</p>	<p style="text-align: right;">Page 45</p> <p>1 was a tax advisor in this transaction; we were not 2 providing legal advice. There were many 3 discussions that had to take place among the 4 lawyers which did not require the presence of PwC. 5 BY MR. COFFIN: 6 Q Turn over to Government Exhibit 37 on 7 the bottom. Just keep that 160 out, please. 8 MR. STERN: What number? 9 MR. COFFIN: 37. 10 BY MR. COFFIN: 11 Q This appears to be an e-mail along with 12 an attachment sent from Becky Davis of, I believe, 13 Bryan Cave to Mr. Palmisano. The attachment is -- 14 looks like the red line stock purchase agreement 15 between -- by and between Fortrend and 16 Mr. Langley. 17 You see that? 18 A Yes. 19 Q And the e-mail was dated September 12 20 of '99. 21 Do you know why Mr. Palmisano would 22 have been receiving a copy of this e-mail and its</p>

12 (Pages 42 to 45)

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Witness: Gary Wilcox

<p style="text-align: right;">Page 46</p> <p>1 attachment, or why he would have received this 2 e-mail and the attachment? 3 MR. TURKUS: Are you asking him to 4 speculate as to why Ms. Davis sent this to 5 Mr. Palmisano, or to generally describe his 6 understanding if he knows? 7 MR. COFFIN: If he knows. 8 A I don't know, although you have already 9 asked me to testify about a fax from Fortrend that 10 indicated PwC, Tom Palmisano, and Ernst & Young 11 had already had a discussion in late August about 12 this transaction. E&Y represented Dennis Langley 13 as well as Bryan Cave. 14 BY MR. COFFIN: 15 Q Bryan Cave represented Langley? 16 A Yes. 17 Q Okay. Did PwC represent Fortrend at 18 all in this transaction? 19 A No. 20 Q Look at Government Exhibit 42, please. 21 Have you ever seen this document 22 before, Mr. Wilcox?</p>	<p style="text-align: right;">Page 48</p> <p>1 anything that that is referring to? 2 MR. STERN: Objection, form. 3 MR. TURKUS: Yeah. Are you asking him 4 whether he saw any information that could be 5 such material or that was specifically what 6 the author of the document was referring to 7 by the term "evaluation material"? 8 MR. COFFIN: What the author of the 9 document was referring to. 10 MR. TURKUS: How can he know? 11 BY MR. COFFIN: 12 Q How about generally then? 13 A I do not know what would have comprised 14 the quote, evaluation material, quote. 15 Q Do you recall ever seeing any documents 16 from Fortrend that would set forth the nature of 17 the Midco transaction? 18 MR. TURKUS: Objection to the form of 19 the question. 20 Is it your interpretation, Mr. Coffin, 21 that that's what evaluation material is, or 22 whether it's material relating to the assets?</p>
<p style="text-align: right;">Page 47</p> <p>1 MR. TURKUS: Before last Friday? 2 MR. COFFIN: Before last Friday, yes. 3 A I believe I would have seen it, but I 4 don't recall exactly when I did see it. 5 BY MR. COFFIN: 6 Q What makes you believe that you did see 7 it? 8 A This appears to be a confidentiality 9 agreement between Fortrend and Midcoast relating 10 to Midcoast's purchase of assets. And as tax 11 advisor to Midcoast, I believe this is the kind of 12 document that would have been shared with me. 13 Q Okay. The first paragraph refers to 14 evaluation material. Would you read that 15 paragraph to yourself, please? 16 MR. TURKUS: You mean the first bullet? 17 MR. COFFIN: First bullet, yes. 18 A Okay. 19 BY MR. COFFIN: 20 Q My question is, it references 21 information in documents that -- in terms of 22 evaluation material. Do you recall ever seeing</p>	<p style="text-align: right;">Page 49</p> <p>1 MR. COFFIN: No, my question is -- just 2 stands by itself. 3 MR. STERN: I object to the form as 4 well. 5 MR. TURKUS: So you want to know 6 whether he saw any information that would be 7 from Fortrend regarding the Midco 8 transaction? 9 MR. COFFIN: Right. 10 MR. TURKUS: And what do you mean by 11 the phrase "Midco transaction" in that 12 context? 13 MR. COFFIN: The way he described it 14 earlier. 15 A As I sit here today, I can say that 16 without having recalled exactly what comprised the 17 evaluation material, that this appears to be a 18 standard confidentiality letter that would be 19 signed between a seller of assets and a buyer of 20 assets. And I believe the reference to evaluation 21 material was intended to relate to various 22 information and documents relating to the assets</p>

13 (Pages 46 to 49)

Witness: Gary Wilcox

Page 50	Page 52
<p>1 that were being sold in this transaction, and I'm 2 not aware that any other information would have 3 been shared by Fortrend other than information 4 relating to the assets which are being sold. 5 BY MR. COFFIN: 6 Q In a standard confidentiality agreement 7 referring with regard to an asset purchase just 8 described, would that necessarily use the words 9 "purpose of evaluating the possible use of the 10 transaction by you and your clients"? 11 MR. TURKUS: Objection to the form of 12 the question. 13 That question just doesn't make sense 14 whatsoever, Mr. Coffin. 15 MR. COFFIN: Why don't you let him -- 16 MR. TURKUS: How can he answer a 17 question about what people would write? 18 MR. COFFIN: He just described what was 19 in a standard -- 20 MR. TURKUS: Right. 21 MR. COFFIN: -- confidentiality 22 agreement.</p>	<p>1 MR. COFFIN: Well, let him answer the 2 question. 3 MR. TURKUS: Well, it makes no sense. 4 Objection to the form of the question. 5 MR. COFFIN: Coaching the witness. 6 MR. TURKUS: I'm not coaching the 7 witness. 8 MR. COFFIN: Yes, you are. 9 MR. TURKUS: I'm making an objection. 10 That question makes no -- 11 MR. COFFIN: Well, just object to the 12 form and that's it. 13 MR. TURKUS: Excuse me, sir. The court 14 reporter can only take one person at a time. 15 I'm stating an objection for the record 16 because the form of that question makes no 17 sense. 18 MR. STERN: Objection to form. 19 MR. COFFIN: Thank you, Karl. 20 A I'm going to try to answer what I 21 believe was the question. I said that this, I 22 believe, appeared to be a standard confidentiality</p>
Page 51	Page 53
<p>1 MR. TURKUS: And you just -- 2 MR. COFFIN: So I'm asking him has he 3 ever -- 4 MR. TURKUS: Can you let me finish my 5 objection? 6 MR. COFFIN: No. Can you just let him 7 answer the question? 8 MR. TURKUS: No. I'm going to state an 9 objection for the record. 10 MR. COFFIN: Well, just state it and 11 that's it. Let him answer the question. 12 MR. TURKUS: All right. Well, I'm 13 saying to you that it makes no sense to ask a 14 witness in a standard confidentiality 15 agreement what author -- whether authors 16 would use five words. That makes no sense. 17 That's a nonsensical question. 18 MR. COFFIN: Well, he just described 19 what's in the standard. 20 MR. TURKUS: But your question is not a 21 reasonable follow-up question. It makes no 22 sense.</p>	<p>1 letter. But, for the record, I am not an expert 2 on confidentiality letters and, at the time, was 3 acting as a tax advisor, not as a legal advisor. 4 So, I really can't comment on particular words 5 being used here, but I note that the transaction 6 is defined in this letter as a transaction 7 relating to the purchase of the assets. 8 I described for you earlier what I 9 believed a Midco transaction was, and I do not see 10 any reference to a Midco transaction in this 11 letter. I see only a reference to a purchase of 12 assets which is defined as the transaction. 13 So in answer to your question, which 14 refers to the language, quote, possible use of the 15 transaction by you and your clients, quote, I 16 don't know how to comment on that other than it 17 simply refers to the purchase of assets. 18 MR. CROKE: Could I have just a 19 five-minute break? 20 MR. COFFIN: Sure. 21 MR. CROKE: That would be helpful. 22 (Whereupon, there was a break from</p>

14 (Pages 50 to 53)

Witness: Gary Wilcox

<p style="text-align: right;">Page 54</p> <p>1 11:15 a.m. until 11:25 a.m.)</p> <p>2 BY MR. COFFIN:</p> <p>3 Q Mr. Wilcox, when you were first</p> <p>4 contacted by Mr. Palmisano, Mr. McErlean regarding</p> <p>5 Midcoast, did they discuss with you using a Midco</p> <p>6 transaction at that time?</p> <p>7 A Yes.</p> <p>8 Q Do you recall if -- who suggested that</p> <p>9 a Midco transaction be used?</p> <p>10 MR. TURKUS: Objection to the form of</p> <p>11 the question.</p> <p>12 MR. STERN: Objection to form.</p> <p>13 A All I recall is that Tom and/or Dennis</p> <p>14 had had conversations as already indicated with</p> <p>15 Fortrend, with E&Y, and they called me to see if I</p> <p>16 could help them advise the client on this</p> <p>17 transaction.</p> <p>18 BY MR. COFFIN:</p> <p>19 Q So at that point in time, was it your</p> <p>20 impression that they had already decided to --</p> <p>21 Midcoast had already decided to engage in a Midco</p> <p>22 transaction?</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. TURKUS: Objection to the form of</p> <p>2 the question.</p> <p>3 You say "at the time." You mean</p> <p>4 September 13?</p> <p>5 MR. COFFIN: Yes.</p> <p>6 A I don't remember specific conversations</p> <p>7 but, as I sit here today, it makes sense that I</p> <p>8 would have described this alternative to them.</p> <p>9 BY MR. COFFIN:</p> <p>10 Q Go back to Government Exhibit 160 which</p> <p>11 is the draft memorandum. Page 4, the first full</p> <p>12 paragraph up at the top there. Could you read</p> <p>13 that to yourself, please?</p> <p>14 A Okay.</p> <p>15 Q There's a sentence, second to the last</p> <p>16 sentence of that paragraph, discusses interest,</p> <p>17 Midcoast did not want to purchase the butcher</p> <p>18 interest currently because of rate base concerns.</p> <p>19 See that?</p> <p>20 A Yes.</p> <p>21 Q Tell me how the rate base concerns</p> <p>22 affected, if you recall, affected Midcoast's</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. TURKUS: Objection to the form of</p> <p>2 the question.</p> <p>3 MR. STERN: Join in that.</p> <p>4 A I don't believe any decisions had been</p> <p>5 made -- any decision had been made by Midcoast to</p> <p>6 pursue what we'll call the Midco alternative at</p> <p>7 the time I was first contacted by Tom and Dennis.</p> <p>8 It had been discussed, but I do not believe a</p> <p>9 decision had been made.</p> <p>10 BY MR. COFFIN:</p> <p>11 Q Did you participate in any discussions</p> <p>12 with Midcoast regarding the Midco alternative?</p> <p>13 MR. TURKUS: At any time?</p> <p>14 MR. COFFIN: At any time.</p> <p>15 A Yes. You know, as indicated by the</p> <p>16 draft memo you referred to, I and -- Tom and I met</p> <p>17 with Midcoast representatives on September 13th to</p> <p>18 discuss the Midco alternative with Midcoast.</p> <p>19 BY MR. COFFIN:</p> <p>20 Q And did you explain to Midcoast at the</p> <p>21 time how the Midco alternative would work for them</p> <p>22 or how it would benefit them?</p>	<p style="text-align: right;">Page 57</p> <p>1 decision to not purchase the -- it did not want to</p> <p>2 purchase the butcher interest.</p> <p>3 A I recall being told -- I don't remember</p> <p>4 by who -- that Midcoast preferred not to acquire</p> <p>5 the butcher interest because of FERC-related</p> <p>6 issues.</p> <p>7 MR. TURKUS: That's F-E-R-C.</p> <p>8 THE WITNESS: F-E-R-C, Federal Energy</p> <p>9 Regulatory Commission issues.</p> <p>10 A That I -- I don't recall determining</p> <p>11 exactly what those issues were other than I was</p> <p>12 told they preferred not to acquire it as part of</p> <p>13 their assets. At least initially.</p> <p>14 BY MR. COFFIN:</p> <p>15 Q Did you learn later of another reason</p> <p>16 why they preferred not to purchase the butcher</p> <p>17 interest?</p> <p>18 A I think that Midcoast's preference not</p> <p>19 to acquire the butcher interest from a FERC</p> <p>20 standpoint was also helpful to Midcoast for their</p> <p>21 tax position.</p> <p>22 Q Okay. How would it be helpful?</p>

15 (Pages 54 to 57)

Witness: Gary Wilcox

<p style="text-align: right;">Page 58</p> <p>1 A Because The Bishop Group Corporation 2 which was acquired by Fortrend would continue to 3 hold a significant asset after its sale of assets 4 to Midcoast. 5 Q And how did that affect the tax -- 6 Midcoast's tax position? 7 A I don't think I'm prepared this morning 8 to explain in detail all of the points that 9 supported Midcoast's tax position but I can just 10 say in general, there was a perception that if the 11 government were to challenge this transaction, it 12 would argue that the participation of Fortrend in 13 buying stock and then selling assets would be 14 ignored for tax purposes. And the presence of 15 Bishop Group Corporation continuing to hold a 16 significant asset after the transaction, I 17 believe, creates difficulty for the government in 18 making that argument. 19 Q Turn to Government Exhibit 77, please. 20 Keep 160 out. 21 A Sorry, 77? 22 Q 77, yeah.</p>	<p style="text-align: right;">Page 60</p> <p>1 haven't read that paragraph, would you continue? 2 A Okay. Okay. 3 Q Do you recall the tax indemnification 4 provision that was being negotiated during -- 5 before this transaction closed, before the asset 6 purchase closed? 7 MR. TURKUS: Objection to the form of 8 the question. 9 A I recall a tax indemnification 10 provision in the stock purchase agreement between 11 Langley and Fortrend. 12 BY MR. COFFIN: 13 Q Okay. Do you recall why Langley 14 requested -- or did Langley request that 15 provision? 16 MR. STERN: Objection, form. 17 MR. TURKUS: Objection, lack of 18 foundation. 19 A I recall that this particular 20 provision -- and I could certainly refer to it if 21 I had a document to refresh my recollection -- but 22 I recall that this provision had been in early</p>
<p style="text-align: right;">Page 59</p> <p>1 A Okay. Yes, I have it. 2 Q Okay. Now, Mr. Wilcox, this is an 3 e-mail with your name nowhere on it between Barry 4 Davis and Richard Robert dated October 19, 1999, 5 and the subject of it is "New Events Memo," and 6 then there's a memo attached to it. 7 There's a paragraph that begins with 8 "However." Could you review that paragraph for 9 me, please? 10 MR. TURKUS: Just for the record, 11 Mr. Coffin, the e-mail from Mr. Robert was 12 addressed to a number of people. 13 MR. COFFIN: Okay. 14 A I've read it, although I will say that 15 I don't know who Barry Davis is or several other 16 people on this e-mail. 17 BY MR. COFFIN: 18 Q Okay. You did read it? 19 A I did read that paragraph, yes. 20 Q Okay. And, I'm sorry, there's, at the 21 end, I see about five lines up, it says, "This is 22 a major deal point with the buyer"? If you</p>	<p style="text-align: right;">Page 61</p> <p>1 drafts of stock purchase agreements between 2 Langley and Midcoast and those drafts existed 3 before Fortrend ever became involved. 4 I also recall that, therefore, I do not 5 believe that this tax indemnification provision 6 was brought into the documents as a result of 7 Fortrend's involvement. I recall it was a 8 standard provision that Langley had put into the 9 various stock purchase agreements it was 10 negotiating not only with Midcoast but other 11 potential bidders. And I recall that the reason 12 for it was that Langley was concerned that certain 13 assets that were being distributed out of Bishop 14 Group would qualify for capital gain treatment, 15 that is, Langley was causing certain assets that 16 were contained within the partnerships that Bishop 17 Group Corporation owned to be distributed out to 18 him prior to the sale of stock, and I believe he 19 wanted to ensure that that distribution would be 20 viewed as part of the overall capital gain 21 transaction on the sale of the stock. 22 Q On Government Exhibit 1, page 6, first</p>

16 (Pages 58 to 61)

Witness: Gary Wilcox

<p style="text-align: right;">Page 62</p> <p>1 paragraph at the top, would you read that to 2 yourself? 3 And my question is: How would you have 4 become aware of these facts in this first 5 paragraph? 6 A You are referring to a meeting on 7 October 23rd in Kansas City. I was present at 8 Kansas City. I was not part of the meeting which 9 is referred to in that first paragraph, but I 10 would have learned what happened in that meeting 11 from the attorneys for Fortrend and, well, from 12 Craig Hoffman and Cynthia Fortrend's attorney. 13 Q Did you deem that those facts were 14 necessary to be included in this memorandum for 15 some reason? 16 MR. TURKUS: Objection to the form of 17 the question. 18 A As I said earlier, this statement of 19 facts was intended to be a detailed account of the 20 course of the transaction, including negotiations 21 between Fortrend and Langley and negotiations 22 between Fortrend and Midcoast. And I believe that</p>	<p style="text-align: right;">Page 64</p> <p>1 at that time but that it would not make such a 2 commitment in writing. 3 Do you recall where you learned that 4 fact from? 5 A No, but very likely I would have 6 learned that from Richard Robert. I was not 7 involved in Midcoast's discussions with its 8 lender. 9 Q Did Mr. Robert tell you why the bank 10 would not make a commitment in writing? 11 A No, I don't recall why other than I 12 believe this paragraph was just intended to convey 13 the notion that there was some risk to Midcoast at 14 that time that the transaction might not happen. 15 Q Turn to page 11, please, Government 16 Exhibit 160. That paragraph above Roman numeral 17 II where it says "Several Differences." 18 Could you read that, please, to 19 yourself? 20 A Okay. 21 Q You're basically listing the 22 differences between the purchase price for the</p>
<p style="text-align: right;">Page 63</p> <p>1 the description of this meeting was consistent 2 with the overall goal of providing that kind of 3 detail. 4 BY MR. COFFIN: 5 Q Go to page 8 of that same document, 6 please. 7 MR. TURKUS: Exhibit 160? 8 MR. COFFIN: Exhibit 160. 9 MR. TURKUS: Thank you. 10 BY MR. COFFIN: 11 Q First full paragraph at the top. If 12 you would read that, where it begins, "At this 13 time." 14 MR. TURKUS: The prior paragraph that 15 refers to November 2nd, 1999; is that 16 correct? 17 MR. COFFIN: Sure. 18 MR. TURKUS: Okay. 19 BY MR. COFFIN: 20 Q It says there that Midcoast's lender 21 stated verbally that it would fund the loan at the 22 appropriate time assuming everything was in order</p>	<p style="text-align: right;">Page 65</p> <p>1 stock purchase and the purchase price for the 2 asset purchase. Why is that important in this 3 memorandum? 4 MR. TURKUS: Objection to the form of 5 the question. 6 MR. STERN: Objection to form. 7 A As I said earlier, we anticipated that 8 if this transaction were challenged by the 9 government, the government would argue that the 10 participation of Fortrend as a stock purchaser and 11 then as an asset purchaser should be ignored -- 12 I'm sorry -- as stock purchaser and then as an 13 asset seller should be ignored and these are 14 additional facts intended to illustrate that the 15 stock purchase agreement between Fortrend and 16 Langley operated independently from the asset 17 purchase agreement between Fortrend and Midcoast. 18 BY MR. COFFIN: 19 Q The last fact you list there, Fortrend 20 earned a spread of approximately 6.4 million on 21 its sale of assets to Midcoast, do you recall, did 22 you calculate that amount?</p>

17 (Pages 62 to 65)

Witness: Gary Wilcox

<p style="text-align: right;">Page 66</p> <p>1 MR. TURKUS: Objection to the form of 2 the question. 3 A I don't remember personally calculating 4 that amount. I must have learned this from Tom 5 Palmisano or from Richard Robert. I don't recall. 6 BY MR. COFFIN: 7 Q Could you have also learned that from 8 anybody from Fortrend? 9 A It's possible, but I believe it's more 10 possible that I would have learned it from Tom 11 Palmisano or Richard Robert. 12 Q Turn over to Government Exhibit 100, 13 please. This appears to be an e-mail string 14 between Midcoast representatives and employees and 15 PwC. It looks like you, Mr. Wilcox, were involved 16 or was a recipient to some of these. 17 The e-mail on the front, Government 18 Exhibit 100, looks like it's from Richard Robert 19 to Mr. Kaitson and you among other people. And it 20 starts out, "There has been a changed to the deal 21 based on PwC's objection to characterizing the 22 supplemental payment of 13.75 as capital gain."</p>	<p style="text-align: right;">Page 68</p> <p>1 were owned by Bishop Group Corporation. 2 As I recall, it was an agreement that 3 MRG entered into with those partnerships prior to 4 Langley sale of stock of The Bishop Corporation, 5 and it related to whether the partnerships could 6 terminate Langley's economic interest in those 7 partnerships that he had retained prior to the 8 sale of the stock. And in order to terminate -- 9 in order for the partnership to exercise an option 10 to terminate Langley's participation, the 11 partnership had to make a payment to Langley, and 12 I believe it was originally 13.75 million. 13 Q Okay. That sentence refers to PwC's 14 objection to characterizing the payment as capital 15 gain. Do you recall what PwC's objection was? 16 A Yes. In our view, that option payment, 17 if it were made, would not be considered part of 18 the transaction in which Langley sold stock of 19 Bishop Group Corporation to Fortrend, nor would it 20 be part of the transaction in which Fortrend sold 21 assets to Midcoast. I believe that Langley would 22 have treated the sale of his stock in Bishop Group</p>
<p style="text-align: right;">Page 67</p> <p>1 Do you recall what that issue was? 2 MR. TURKUS: Just for the record, at 3 least one of the cc's there is, I think, is 4 from outside counsel to -- 5 MR. COFFIN: Midcoast? 6 MR. TURKUS: I think so. I don't know 7 all the players but on the next page there 8 are other people. Just for the record. 9 MR. COFFIN: Sure. 10 A And I also -- you said that this is a 11 chain of e-mails, and I don't know whether these 12 e-mails are actually a chain or have otherwise 13 been put together. 14 BY MR. COFFIN: 15 Q Okay. Let's just talk about in this 16 subject matter of the e-mails. 17 A All right. I believe that the 18 reference to a payment of 13.75 refers to a 19 payment that might be made under the option 20 agreement which I recall was an agreement between 21 MRG, an entity in which Dennis Langley was a 22 member, and KPC or perhaps other partnerships that</p>	<p style="text-align: right;">Page 69</p> <p>1 as a capital gain, but we believed that this 2 payment option should not have been viewed as 3 additional consideration paid to Langley in 4 connection with his sale of stock. It was an 5 independent payment that would be made by this 6 partnership in the event the partnership decided 7 to buy him out. Therefore, it had to be analyzed 8 as a payment made by a partnership to cancel an 9 option. And I don't recall what the appropriate 10 tax treatment of that would be, but I knew that 11 that payment should not have been considered part 12 of Langley's sale of stock. 13 Q Turn to the next page, PwC049. I think 14 this is a -- appears to be an e-mail from you, 15 Mr. Wilcox, to various people, including 16 Mr. Kaitson and people at Midcoast; is that 17 correct? 18 A Yes, it appears to be. 19 Q Under No. 2 at the bottom where it says 20 "Guaranteed by KPC," and it appears, at least on 21 my copy, to be bold, it says, "Note that the 22 option agreement must not be guaranteed by</p>

18 (Pages 66 to 69)

Witness: Gary Wilcox

<p style="text-align: right;">Page 70</p> <p>1 Midcoast pursuant to the parent guarantee." 2 Do you remember that issue arising? 3 A I don't remember specifically how it 4 arose but as I read these words now, I believe I 5 was simply responding to a request from somewhere 6 that the parent guarantee be expanded to include a 7 guarantee of KPC's obligation under the option 8 agreement and I was stating that there it didn't 9 appear to be any need or value in doing that. 10 Q Was that a tax issue? 11 MR. TURKUS: Excuse me. I'm not sure 12 he was finished answering the question. 13 MR. COFFIN: I'm sorry. 14 A I think I finished that last one. 15 BY MR. COFFIN: 16 Q Okay. Was that a tax issue then? 17 A Well, everything that I commented on 18 here, particularly in writing, was advice given 19 from a tax standpoint. So, yes, I believe it was 20 a fact that -- so it went into the overall mix of 21 facts that could be relevant to the tax position. 22 Q How was then this fact relevant to</p>	<p style="text-align: right;">Page 72</p> <p>1 A It appears to all be part of the same 2 e-mail. 3 MR. TURKUS: It's the e-mail that 4 begins on the bottom of page PwC048? 5 MR. COFFIN: Yes, sir. 6 BY MR. COFFIN: 7 Q Item No. 3, could you read that 8 paragraph to yourself, please? 9 A Okay. 10 Q Tell me how the tax -- Midcoast's tax 11 position would be affected by that in the first 12 sentence where it says, "It is critical Midcoast's 13 tax position that The Bishop Group, Limited, is 14 not liquidated by Fortrend for at least two 15 years." 16 How would the nonliquidation of 17 Fortrend affect Midcoast's tax position? 18 A Again, in anticipation that the 19 government would attempt to ignore the 20 participation of Fortrend as a stock purchaser and 21 an asset seller. I believed it would be helpful 22 to Midcoast's tax position that the corporation,</p>
<p style="text-align: right;">Page 71</p> <p>1 Midcoast's tax position? 2 A I don't know what the government's 3 argument is here, legal argument for why the 4 taxpayers should be entitled to the tax benefit 5 they're claiming. As I said earlier, we 6 anticipated that if there were ever a government 7 challenge, the government would try to ignore the 8 participation of Fortrend as a purchaser of stock 9 and then a seller of assets. And as I've seen so 10 far in my prior interview and now today, it's 11 clear that any guarantee that Midcoast is 12 perceived as giving is a fact that the government 13 will focus on. 14 So I think the advice here was why put 15 a guarantee in place that will cause the 16 government to focus even further on something 17 that, in the end, economically, was not important. 18 Q Turn to the next page, please. Look at 19 the Bates number on the bottom, PwC050. 20 Item No. 3 under "Stock Purchase 21 Agreement," this is still continuing on with your 22 e-mail; is that right?</p>	<p style="text-align: right;">Page 73</p> <p>1 Bishop Group, Limited, remain in existence as a 2 corporation for two years. It just so happened 3 that there was an independent need for, as I 4 remember, for the corporation to remain in 5 existence because of a requirement that Bishop 6 Group, Limited, continued to pursue a lawsuit. I 7 can't recall exactly what that lawsuit was, but I 8 believe that it may be referenced in the stock 9 purchase agreement. 10 Q In that lawsuit with Bishop Group, 11 would it have been a plaintiff or a defendant; do 12 you recall? 13 A I don't recall. I believe it was as a 14 plaintiff, as I recall. Therefore, if there were 15 any recovery, it would inure to the benefit of The 16 Bishop Group, Limited, which was a corporation 17 owned by Fortrend. 18 Q And which party would have requested 19 that Fortrend not liquidate or Bishop Group not 20 liquidate for two years? 21 MR. TURKUS: Objection to the form of 22 the question.</p>

19 (Pages 70 to 73)

Witness: Gary Wilcox

<p style="text-align: right;">Page 74</p> <p>1 When you say "would have requested,"</p> <p>2 are you asking --</p> <p>3 BY MR. COFFIN:</p> <p>4 Q Which party did request that The Bishop</p> <p>5 Group not be liquidated?</p> <p>6 MR. TURKUS: Objection to the form of</p> <p>7 the question.</p> <p>8 A I don't know that it was requested by</p> <p>9 either party.</p> <p>10 BY MR. COFFIN:</p> <p>11 Q "Either party" being?</p> <p>12 A I don't believe it was requested by</p> <p>13 Langley in the stock purchase agreement or that it</p> <p>14 was requested by Midcoast in the asset purchase</p> <p>15 agreement. However, my advice is that -- was that</p> <p>16 it would be a helpful fact for Midcoast if the</p> <p>17 company were to remain in existence. That,</p> <p>18 combined with this independent need for Bishop</p> <p>19 Group to continue maintaining its position in a</p> <p>20 lawsuit, you know, allowed this requirement to</p> <p>21 remain in existence to be, you know, agreeable to,</p> <p>22 you know, the parties involved.</p>	<p style="text-align: right;">Page 76</p> <p>1 Q And the next sentence, you say, "I</p> <p>2 understand that some of these receivables are due</p> <p>3 from governmental agencies with little, if any,</p> <p>4 collection risk involved."</p> <p>5 How was that relevant to the tax issue?</p> <p>6 MR. STERN: Objection to form.</p> <p>7 MR. TURKUS: Objection to the form of</p> <p>8 the question.</p> <p>9 A If K-Pipe -- to the extent K-Pipe</p> <p>10 retained an asset, that would mean that K-Pipe</p> <p>11 would not be selling the asset and, therefore,</p> <p>12 K-Pipe's sales price for those assets would be</p> <p>13 less. So K-Pipe would be presumably taking on</p> <p>14 some risk to the extent it retained assets, and my</p> <p>15 point here is that these are assets that had</p> <p>16 relatively little --</p> <p>17 Q I'm sorry to interject. How would that</p> <p>18 affect the sales price? Is that what you said?</p> <p>19 A Well, if the receivables go with the</p> <p>20 assets that are purchased by Midcoast and Midcoast</p> <p>21 will pay for those receivables. If they are</p> <p>22 retained by K-Pipe, Midcoast won't pay for those</p>
<p style="text-align: right;">Page 75</p> <p>1 Q Where -- did you suggest two years; is</p> <p>2 that right?</p> <p>3 A It does appear he suggested two years.</p> <p>4 Q Why two years?</p> <p>5 A Tax advisors commonly think of two</p> <p>6 years as a safe harbor under the tax law for</p> <p>7 avoiding a step transaction challenge. Although</p> <p>8 it's by no means necessary, that it be at least</p> <p>9 two years. It's just viewed as a comfortable</p> <p>10 period of time.</p> <p>11 Q And in the next item, No. 4, if you</p> <p>12 would look at that. On the second page, PwC050.</p> <p>13 A Okay.</p> <p>14 Q You comment that you would like K-Pipe</p> <p>15 to think about retaining some of the receivables</p> <p>16 that are currently in KPC.</p> <p>17 Why were you making that suggestion?</p> <p>18 A Again, because of a concern that the</p> <p>19 government might argue that the participation of</p> <p>20 Fortrend might be ignored. The more activities</p> <p>21 that remain after the transaction, the stronger</p> <p>22 the tax position.</p>	<p style="text-align: right;">Page 77</p> <p>1 receivables and K-Pipe would have received less up</p> <p>2 front from Midcoast. Now, why would K-Pipe do</p> <p>3 that unless it believed that it was going to</p> <p>4 collect on those receivables.</p> <p>5 (Whereupon, there were discussions off</p> <p>6 the record.)</p> <p>7 BY MR. COFFIN:</p> <p>8 Q Back on the same exhibit, Exhibit No.</p> <p>9 100, back to PwC050 under "Stock Purchase</p> <p>10 Agreement" again. Talking about that liquidation</p> <p>11 provision, and you comment that, "Such a provision</p> <p>12 would look unusual in the asset purchase</p> <p>13 agreement."</p> <p>14 Do you recall why you believed it would</p> <p>15 look unusual in the asset purchase agreement?</p> <p>16 A Midcoast was merely purchasing assets</p> <p>17 from the Bishop Group, Limited. At the time, it</p> <p>18 seemed unusual to me for a buyer of assets to</p> <p>19 require that the seller remain in existence as a</p> <p>20 legal entity for any period of time, whereas in</p> <p>21 the stock purchase agreement, by virtue of the</p> <p>22 obligation of Fortrend to maintain these lawsuits</p>

20 (Pages 74 to 77)

Witness: Gary Wilcox

<p style="text-align: right;">Page 78</p> <p>1 in the name of Bishop Group, Limited, it made more 2 sense to me for that provision to be in that 3 agreement. 4 Q Okay. Turn back to Government 5 Exhibit 79. 6 A 79? 7 Q 79. 8 MR. COFFIN: You don't have 79? 9 MR. TURKUS: No. We go from 77 to 87. 10 MR. COFFIN: Okay. 11 MR. TURKUS: Do you want me to make 12 some copies of it? 13 MR. COFFIN: It's a three-page 14 document. I'll show it to him and then ask 15 him a question. If you guys want to look at 16 it -- 17 BY MR. COFFIN: 18 Q Take a look at that document. 19 MR. COFFIN: If I may look over his 20 shoulder, Mr. Turkus. 21 BY MR. COFFIN: 22 Q That is a letter from K-Pipe Merger</p>	<p style="text-align: right;">Page 80</p> <p>1 the question. 2 A Yes. 3 BY MR. COFFIN: 4 Q Any idea why it was not included in the 5 stock purchase agreement itself? 6 MR. TURKUS: Objection to the form of 7 the question. Objection, lack of foundation. 8 A I don't recall other than, as I sit 9 here now, one explanation is that the stock 10 purchase agreement had already been signed at the 11 time this -- these particular matters were agreed 12 to, and so it was done by side letter rather than 13 amend the agreement. 14 Well, let me clarify. I believe the 15 intention was that this letter agreement is, from 16 a legal standpoint, an amendment of the stock 17 purchase agreement. It's just done by letter 18 rather than by formal amendment. 19 Q If you'll keep that over there. Turn 20 to Government Exhibit 102, please. 21 You recall seeing this document, 22 Mr. Wilcox, prior to Friday?</p>
<p style="text-align: right;">Page 79</p> <p>1 Corporation to Mr. Langley; is that correct? 2 MR. TURKUS: The document speaks for 3 itself. Objection to the form of the 4 question. 5 A Yes, appears to be a letter from K-Pipe 6 Merger to Dennis Langley. 7 BY MR. COFFIN: 8 Q Okay. And Item No. 2 -- let me back 9 up. 10 The preamble to the letter makes 11 reference to the stock purchase agreement between 12 Langley and K-Pipe Merger. And Item No. 2 13 contains a representation warranty that says, 14 "K-Pipe represents and warrants to Langley that 15 K-Pipe has no plan or intention to liquidate the 16 company and agrees it will not liquidate the 17 company for at least two years after the closing 18 date." 19 Mr. Wilcox, is that the provision you 20 were suggesting in your e-mail that we just looked 21 at? 22 MR. TURKUS: Objection to the form of</p>	<p style="text-align: right;">Page 81</p> <p>1 MR. STERN: 101? 2 MR. COFFIN: 102. 3 A I have a faint memory of receiving this 4 from Cathy Coffey, although I can't recall when. 5 BY MR. COFFIN: 6 Q You have a faint memory, you said? 7 A Well -- 8 Q The cover page is -- looks like a plain 9 piece of paper, to Gary Wilcox from Cathy and -- 10 is that Ian Schacter? 11 A Yes. 12 Q It says, "As promised." Whose 13 signature is that? 14 A I don't know. 15 Q Okay. And it says "Section 1031 16 Analysis" on that. Do you see that? 17 A Yes. 18 Q Do you recognize that handwriting? 19 A No, but it's not mine. 20 Q Okay. And in the corner, it says "Copy 21 to Brian"; is that right? 22 A Looks like Byron.</p>

21 (Pages 78 to 81)

Witness: Gary Wilcox

<p style="text-align: right;">Page 82</p> <p>1 Q Byron? Do you know Byron?</p> <p>2 A Byron Shoji, S-H-O-J-I.</p> <p>3 Q Who is he?</p> <p>4 A He was a manager in the PwC Washington</p> <p>5 office.</p> <p>6 Q Okay.</p> <p>7 A He must have been helping as well.</p> <p>8 Q And the text that is attached relates</p> <p>9 to multiparty like-kind exchange transaction.</p> <p>10 A Okay.</p> <p>11 Q Do you recall what relevance multiparty</p> <p>12 like-kind exchange transactions had with regard to</p> <p>13 your work on the Midcoast project?</p> <p>14 MR. TURKUS: Objection to the form of</p> <p>15 the question.</p> <p>16 MR. STERN: Objection to form.</p> <p>17 A This related to the legal support for</p> <p>18 the taxpayer's position that Fortrend's purchase</p> <p>19 of stock and then Fortrend's sale of assets were</p> <p>20 two separate transactions for tax purposes. And</p> <p>21 the like-kind exchange area is analogous because,</p> <p>22 in that area, it's commonly known that so-called</p>	<p style="text-align: right;">Page 84</p> <p>1 BY MR. COFFIN:</p> <p>2 Q And the second paragraph of that</p> <p>3 e-mail, your e-mail, you say, "The third guarantee</p> <p>4 gave me the most heartburn. Obviously I do not</p> <p>5 want to see Midcoast, the asset buyer, providing a</p> <p>6 guarantee of certain obligations under the stock</p> <p>7 purchase agreement."</p> <p>8 Why did that give you heartburn, that</p> <p>9 statement?</p> <p>10 MR. TURKUS: Objection to the form of</p> <p>11 the question.</p> <p>12 A I'll repeat again. My concern is that</p> <p>13 if the government were to challenge this</p> <p>14 transaction, it would argue that the participation</p> <p>15 of Fortrend as stock purchaser and asset seller</p> <p>16 would be ignored. And while I do not recall any</p> <p>17 legal authority on point, that would suggest that</p> <p>18 a guarantee from Midcoast, the asset buyer, to</p> <p>19 Langley, the stock seller, would present a problem</p> <p>20 for Midcoast.</p> <p>21 The ultimate legal question is one that</p> <p>22 depends on all the facts and circumstances, and</p>
<p style="text-align: right;">Page 83</p> <p>1 intermediaries are used to purchase real estate</p> <p>2 and then sell real estate in back-to-back</p> <p>3 transactions, and the courts have upheld those</p> <p>4 transactions as separate transactions.</p> <p>5 So I believe this was sent in</p> <p>6 anticipation of preparing the draft backup</p> <p>7 memorandum.</p> <p>8 BY MR. COFFIN:</p> <p>9 Q Government Exhibit 160?</p> <p>10 A Yes.</p> <p>11 Q Turn to Government Exhibit 105, please.</p> <p>12 This appears to be a string of e-mails</p> <p>13 again between Midcoast, including you, Mr. Wilcox,</p> <p>14 and several other people. And you provided</p> <p>15 comments in the e-mail below that you sent Sunday,</p> <p>16 October 31st, 1999. Can you read through the --</p> <p>17 that page there, the first page of Government</p> <p>18 Exhibit 105?</p> <p>19 MR. TURKUS: We only have one page.</p> <p>20 MR. COFFIN: I'm sorry. The bottom of</p> <p>21 that.</p> <p>22 A Okay.</p>	<p style="text-align: right;">Page 85</p> <p>1 there were many facts and circumstances that had</p> <p>2 to be weighed throughout the course of this</p> <p>3 transaction. And this was a fact, this reference</p> <p>4 to the third guarantee, was a fact that I</p> <p>5 anticipated would be considered an adverse fact by</p> <p>6 the government if the government were to challenge</p> <p>7 the transaction. That's why I refer to it that</p> <p>8 way.</p> <p>9 Q How did you know that Langley would not</p> <p>10 do the deal without that guarantee?</p> <p>11 MR. STERN: Objection, form.</p> <p>12 A I testified earlier that this so-called</p> <p>13 tax indemnification provision that was in the</p> <p>14 stock purchase agreement had been in early drafts</p> <p>15 of Langley stock purchase agreement, including</p> <p>16 drafts that were made at a time before Fortrend</p> <p>17 was ever involved. It was important to Langley</p> <p>18 that he receive capital gain treatment on the sale</p> <p>19 of his stock, including capital gain treatment on</p> <p>20 the distributions of assets prior to the sale of</p> <p>21 the stock, and he had it in his mind that that</p> <p>22 particular provision was very important to him.</p>

22 (Pages 82 to 85)

Witness: Gary Wilcox

<p style="text-align: right;">Page 86</p> <p>1 And in terms of how I learned that he 2 would not do the deal without it, I don't know how 3 I learned that. 4 BY MR. COFFIN: 5 Q So Langley was requiring Midcoast to 6 make the guarantee; is that right? 7 MR. STERN: Objection, form. 8 MR. TURKUS: Objection, form of the 9 question. 10 A No, not necessarily. I think Langley 11 was requiring that he -- that there be some source 12 of assets other than Fortrend International to 13 support this tax indemnification provision which, 14 as I have testified, is a provision that was 15 really limited to ensuring that Langley had 16 capital gain treatment on the sale of a stock. 17 BY MR. COFFIN: 18 Q I don't understand why he couldn't have 19 just gotten that guarantee from Fortrend. 20 MR. TURKUS: Is that a question? 21 MR. COFFIN: Um-hum. 22</p>	<p style="text-align: right;">Page 88</p> <p>1 government were to challenge this, they would 2 focus on the various facts and circumstances and 3 any guarantees running directly from Midcoast to 4 Langley would perhaps cause the government to be 5 more concerned than if those guarantees were not 6 directly running between those parties. 7 Again, just to clarify, this particular 8 provision being guaranteed was not viewed by 9 Midcoast as really having presenting any exposure 10 to Midcoast. Therefore, Midcoast, I believe, was 11 willing to accommodate Langley's request and to 12 provide a source of assets that would ultimately 13 back that indemnification provision. At the same 14 time, knowing that the provision did not really 15 expose Midcoast to any real risk because the 16 provision was really limited to ensuring that 17 Langley receives capital gain treatment and 18 regardless of what the government's theory is on 19 this transaction as to how it should be 20 characterized, Langley will get capital gain 21 treatment one way or the other. So, frankly, 22 that's why the provision was not viewed as</p>
<p style="text-align: right;">Page 87</p> <p>1 BY MR. COFFIN: 2 Q Do you know why? 3 MR. TURKUS: Objection to the form of 4 the question. Objection, lack of foundation. 5 BY MR. COFFIN: 6 Q Why he needed -- 7 A I think I just said that I recall that 8 Langley wanted to be able to look to the source of 9 assets other than the assets of Fortrend 10 International to support that tax indemnification. 11 Q The last paragraph of that e-mail, 12 Exhibit 105, you make a statement in there, "What 13 I don't want to see is just a naked guarantee by 14 Midcoast and KPC's guarantee of the tax indemnity. 15 It helps to have Midcoast one step removed from 16 KPC by having the assumption agreement in between. 17 It also helps to have Midcoast's guarantee arise 18 as part of the change of control provisions of the 19 SPA." 20 Do you recall why you made those 21 comments? 22 A As I've said, I anticipated that if the</p>	<p style="text-align: right;">Page 89</p> <p>1 exposing Midcoast. 2 Q You talk about exposing Midcoast. Are 3 you talking just about financial risk or tax risk? 4 A Well, I believe the provision says that 5 if Langley doesn't get capital gain treatment, 6 then there will be an indemnity to Langley. And 7 in the first instance, Fortrend, as the party to 8 the stock purchase agreement, has agreed to 9 indemnify Langley. I believe that Fortrend's 10 obligation under the stock purchase agreement is 11 guaranteed by KPC, which is the partnership owned 12 by Bishop Group, that that obligation of KPC, in 13 turn, I believe, was guaranteed by Midcoast. 14 You asked me about the last paragraph. 15 I believe that refers to how the Midcoast 16 guarantee of KPC's obligation would come into 17 existence. And, as I recall, when Langley 18 withdrew certain rights and assets out of the 19 partnerships prior to his sale of the stock of 20 Bishop Group, he also entered into this project 21 development agreement -- or, rather, MRG, an 22 entity in which Langley was a member entered into</p>

23 (Pages 86 to 89)

Witness: Gary Wilcox

<p style="text-align: right;">Page 90</p> <p>1 the project development agreement which, as I 2 recall, entitled MRG to certain rights and sharing 3 of revenues and the like from the partnerships 4 even after there was a change in control of KPC. 5 And the project development agreement 6 said that if there were a change in control of 7 KPC -- that is, a change in control after Fortrend 8 bought the stock of Bishop Group -- that the new 9 controlling party would have to guarantee the 10 obligations of KPC in order for Langley to consent 11 to the change of control event. And I was 12 referring to the possibility of this guarantee by 13 Midcoast of KPC's obligations coming into 14 existence as a result of the change in control of 15 KPC which was governed by ultimately by the 16 project development agreement. 17 Q Are you finished? 18 A Yes. 19 Q Would you look at your exhibits after 20 Government Exhibit 109? Is it by chance you have 21 Government Exhibit 79 there? After 109. I'm just 22 wondering if maybe my admin person put it after</p>	<p style="text-align: right;">Page 92</p> <p>1 This partnership was a partnership 2 between -- essentially between Midcoast and 3 Fortrend relating to the ownership of the butcher 4 interest after Fortrend sold assets to Midcoast. 5 As I recall, the butcher interest had been valued 6 at around six and a half million. 7 Q Let me stop you right there. 8 A Yeah. 9 Q Do you recall who determined the value 10 of the butcher interest? 11 A No. I don't know it that was 12 Midcoast's view as to what it was worth or whether 13 there was an appraisal. I have no idea. 14 Q Okay. Turn to Government Exhibit 115, 15 please. 16 A Okay. 17 Q This is a letter from 18 PricewaterhouseCoopers to Mr. Richard Robert dated 19 November 5 of '99. And the first page of the 20 exhibit was previously redacted and it looks like 21 the second page, which contains the same Bates 22 number as the first page, has been unredacted.</p>
<p style="text-align: right;">Page 91</p> <p>1 109. 2 MR. STERN: It's not after 109 in mine. 3 MR. COFFIN: Never mind. 4 MR. TURKUS: 110 is after 109. I'll 5 make more copies of it for you. 6 MR. COFFIN: At lunch? 7 MR. TURKUS: Whenever you want to take 8 a break. 9 BY MR. COFFIN: 10 Q Turn to 110, please. Once again, 11 another e-mail, Mr. Wilcox. Your name is not on 12 it anywhere, but my question for you has to do 13 with the butcher interest partnership. 14 Do you recall the circumstances 15 surrounding the formation of that partnership? 16 A As I testified earlier, I recall 17 hearing that Midcoast had a preference for not 18 acquiring the butcher interest because of 19 FERC-related reasons. And it may have been -- and 20 this is speculation at this point -- that what 21 they didn't want to do is acquire control of the 22 butcher interest.</p>	<p style="text-align: right;">Page 93</p> <p>1 Do you recall seeing this document? 2 A Yes. 3 Q Was this something you drafted or 4 somebody in your office drafted? 5 A I was in Washington. This is on the 6 Houston office letterhead. I did not sign this 7 document. That is not my signature or 8 handwriting. But I do believe I participated in 9 drafting this with the help of Tom Palmisano and 10 others. 11 Q Did PwC request that this engagement 12 letter or this letter be entered into with 13 Midcoast? 14 MR. TURKUS: Objection to the form of 15 the question. Objection, lack of foundation. 16 A I don't recall exactly how this letter 17 came about but, as I sit here today, it seems 18 reasonable to me that PwC would have requested 19 Midcoast to sign this letter. 20 BY MR. COFFIN: 21 Q And why would have PwC requested that 22 the letter be signed by Midcoast?</p>

24 (Pages 90 to 93)

Witness: Gary Wilcox

<p style="text-align: right;">Page 94</p> <p>1 MR. STERN: Objection to form. 2 MR. TURKUS: Objection to the form of 3 the question. 4 A As I recall, PwC already had a general 5 engagement letter with Midcoast. However, PwC's 6 understanding with Midcoast for this transaction 7 was that PwC would issue advice and, most likely, 8 an opinion to the effect, you know, described in 9 this document. And from that standpoint alone, 10 it's important to put in writing what the -- to 11 put in writing the scope of the engagement so that 12 there's no misunderstanding as to what PwC is to 13 deliver to the client. In addition, it was 14 important to put in writing what the fee 15 arrangement was for these services. 16 BY MR. COFFIN: 17 Q And what was the fee arrangement? 18 A Do you want me to read to you what the 19 letter says? 20 Q No. That's a good point. Look at the 21 second paragraph of PwC145. Just read that 22 paragraph to yourself.</p>	<p style="text-align: right;">Page 96</p> <p>1 A PwC was paid pursuant to the terms of 2 this letter based on the extraordinary value 3 provision. 4 BY MR. COFFIN: 5 Q And, in fact, did Midcoast have to 6 approve -- Midcoast had to agree that PwC had 7 provided extraordinary value in order for PwC to 8 be paid; is that correct? 9 MR. TURKUS: Objection to the form of 10 the question. 11 You mean paid pursuant to the 12 extraordinary value provision? 13 MR. COFFIN: Yes. 14 A In order for PwC to be paid pursuant to 15 the extraordinary value provision, Midcoast would 16 have to conclude that PwC had brought 17 extraordinary value to the transaction. If 18 Midcoast did not reach that conclusion, then PwC 19 would be paid based upon its rates and hours. 20 BY MR. COFFIN: 21 Q And in this particular -- with regard 22 to this particular engagement, how did -- what did</p>
<p style="text-align: right;">Page 95</p> <p>1 A Okay. 2 Q What was meant by the phrase 3 "extraordinary value"? 4 A As I remember that, that was a phrase 5 that was commonly used in engagement letters to 6 provide for the possibility that PwC would receive 7 a fee that might exceed a fee based solely on 8 rates and hours. It was intended -- it's intended 9 to be a subjective standard, subjective from the 10 client's standpoint as to whether or not we have 11 brought extraordinary value. It's intended to be 12 a standard where there's no binding agreement to 13 be paid; it's up to the client. 14 Q And with regard to this particular 15 project, PwC was paid based on this extraordinary 16 value; is that correct? 17 MR. TURKUS: Objection to the form of 18 the question. 19 BY MR. COFFIN: 20 Q Rather than the hourly billings? 21 MR. TURKUS: Objection to the form of 22 the question.</p>	<p style="text-align: right;">Page 97</p> <p>1 Midcoast conclude; do you know? 2 A Midcoast concluded that PwC had brought 3 extraordinary value to the transaction. 4 Q And I think, if I recall your 5 interview, transcript testimony, I think you 6 said -- was there a letter from Midcoast 7 approving -- formally approving payment based on 8 the extraordinary value provision? 9 MR. TURKUS: Objection to the form of 10 the question. 11 Are you asking him whether there was a 12 letter, or are you asking him what he 13 testified to in the interview? 14 BY MR. COFFIN: 15 Q Was there a letter? 16 A I recall there being a letter, but my 17 memory is faint at this point. But I recall there 18 being a letter from Midcoast to Fortrend whereby 19 Midcoast -- and I don't know what it indicated, I 20 don't know what that letter referred to -- its 21 decision that we had brought extraordinary value 22 to the transaction. But I believe the purpose of</p>

25 (Pages 94 to 97)

Witness: Gary Wilcox

<p style="text-align: right;">Page 98</p> <p>1 that letter was to direct Fortrend to pay a 2 portion of the sales proceeds that Midcoast had 3 paid Fortrend to direct Fortrend to pay a portion 4 of those sales proceeds to PwC in accordance with 5 the arrangement that Midcoast had with PwC. But I 6 don't have the letter here. I don't recall 7 exactly what it said. 8 Q Was it your belief then that Midcoast 9 was paying the fee or that Fortrend was paying the 10 fee? 11 A Our belief was that Midcoast was paying 12 the fee. Midcoast was our client. If Midcoast 13 did not direct Fortrend to apply the monies to a 14 payment to PwC, PwC would not have received those 15 monies, and PwC would have then simply billed 16 Midcoast for the rates and hours which, frankly, 17 were substantial. 18 Q Do you recall what they were? 19 A I have no idea what the time records or 20 what the billings reflect, but I think, I don't -- 21 I am guessing. Can I guess? 22 Q Sure.</p>	<p style="text-align: right;">Page 100</p> <p>1 verbal agreement? 2 A Absolutely. 3 Q And at what point -- the part of the 4 services PwC has represented that it would provide 5 was an opinion from PwC to Midcoast. Do you 6 recall when PwC agreed to provide the tax opinion? 7 MR. TURKUS: When it agreed to? As 8 opposed to when it provided it? 9 MR. COFFIN: Yes, when it agreed to. 10 A I don't believe there was any agreement 11 between PwC and Midcoast, any specific agreement 12 as to when that opinion would be provided. It was 13 certainly understood that the opinion would be 14 provided sometime after the transaction. 15 MR. TURKUS: I don't think that was the 16 question. I thought the question was when 17 was it agreed to. 18 THE WITNESS: Okay. 19 MR. TURKUS: That an opinion would be 20 provided. 21 A There was no agreement as to 22 specifically as to when the opinion would be</p>
<p style="text-align: right;">Page 99</p> <p>1 A I am guessing that they were close to 2 500,000. 3 Q All right. The letter's dated 4 November 5 of '99, and the stock purchase and the 5 asset sale occurred on November 8th and 9th 6 respectively. I was wondering why so late in the 7 engagement was an engagement letter signed by both 8 parties? 9 MR. TURKUS: Objection to the form of 10 the question. 11 A I don't remember why it was not until 12 November 1999 that this letter was signed. I can 13 say that PwC knew that it needed to have this 14 letter in place with Midcoast. 15 This transaction was all-consuming from 16 the client's standpoint. Richard Robert, in 17 particular, had many other pressing issues, and I 18 think it was simply there's no other reason other 19 than this ended up going to the back burner. 20 BY MR. COFFIN: 21 Q Was the engagement letter, I mean 22 Exhibit 115, was it -- did it memorialize a prior</p>	<p style="text-align: right;">Page 101</p> <p>1 provided. 2 MR. TURKUS: That's not the question. 3 The question he's asking, I think, is when 4 did PwC and the client agree that an opinion 5 would be provided, not as to the date that it 6 would ultimately be provided, but when was 7 that agreement reached, I think. 8 THE WITNESS: It's a leading question. 9 MR. TURKUS: He's asking you when did 10 the two parties agree that one of the 11 services to be provided by PwC would be an 12 opinion. 13 THE WITNESS: Oh, okay. I'm sorry. 14 MR. TURKUS: I'm sorry. I didn't do 15 that very well. 16 A I don't recall exactly when, but I 17 believe it was understood between PwC and Midcoast 18 at the inception of this so-called Midco 19 alternative that PwC would ultimately provide an 20 opinion. The description of the opinion, as I've 21 said in this engagement letter, is really just a 22 confirmation of a prior verbal agreement between</p>

26 (Pages 98 to 101)

Witness: Gary Wilcox

<p style="text-align: right;">Page 102</p> <p>1 PwC and Midcoast. 2 BY MR. COFFIN: 3 Q Do you recall how the fee that was paid 4 to PwC was computed? 5 A When PwC had its initial conversation 6 with Fortrend, which I believe was -- well, let me 7 clarify. When PwC had a conversation with 8 Fortrend, I believe on September 13. 9 Q That was by telephone? 10 A By telephone. Fortrend indicated to 11 PwC that it had a common practice of permitting a 12 portion of its proceeds from the sale of assets to 13 be used for payment of a fee to buyer's counsel or 14 tax advisors if the buyer so directed. And its 15 practice had been to permit a fee that was a 16 percentage of the profit that Fortrend earned in 17 connection with the transaction. 18 Q How was the profit determined? 19 A All I recall is I was told by Fortrend 20 in general how it would price the sale of the 21 assets. That price, of course, was a function of 22 what it had to pay to buy the stock. And Fortrend</p>	<p style="text-align: right;">Page 104</p> <p>1 prior to last Friday, Mr. Wilcox? 2 A I'm familiar with the representation 3 letter by Fortrend, but this is a markup of one of 4 the drafts and I don't recall seeing this specific 5 draft. 6 Q Do you recall who was responsible -- 7 who at PwC was responsible for drafting a 8 representation letter between PwC and Fortrend? 9 MR. TURKUS: Objection to the form of 10 the question. 11 MR. STERN: I join that as well. 12 A I believe that Cathy Coffey would have 13 produced an initial draft, and then she and I -- 14 BY MR. COFFIN: 15 Q Go to 135. Maybe that will help. 16 MR. TURKUS: Excuse me. He hadn't 17 finished answering the question. 18 MR. COFFIN: I'm sorry. 19 A She and I worked together to produce 20 the letter. 21 BY MR. COFFIN: 22 Q Okay. And if you'll turn to 135.</p>
<p style="text-align: right;">Page 103</p> <p>1 said it would -- its practice was to sell the 2 assets for a price that allowed Fortrend to earn a 3 profit that approximated some percentage of the 4 step-up in asset basis as a result of the sale of 5 assets. 6 Q And in that September 13, 1999 7 telephone conference with Fortrend, were the 8 parties aware, the parties to that conversation, 9 aware at the time of what the step-up in assets 10 would be? 11 MR. TURKUS: Objection to the form of 12 the question. 13 A I don't recall there being any 14 discussion of any specific amounts. There might 15 have been; I just don't remember. I don't 16 remember knowing what, at that time, what the 17 inside asset basis of Bishop Group's assets were. 18 MR. COFFIN: Let's break for lunch. 19 (Whereupon, there was a break from 20 12:58 p.m. until 1:49 p.m.) 21 BY MR. COFFIN: 22 Q Have you seen Government Exhibit 134</p>	<p style="text-align: right;">Page 105</p> <p>1 MR. STERN: Yet another one I don't 2 have. 3 MR. COFFIN: Do you have that now? 4 MR. STERN: I'm disadvantaged. 5 BY MR. COFFIN: 6 Q Have you seen this fax and attachment, 7 Mr. Wilcox? 8 A Well, the handwriting -- I'll just cut 9 to the chase. The handwriting is mine, so that 10 means I would have seen it, but I don't recall 11 when. 12 Q Now, did PwC represent Fortrend? 13 A No. 14 Q What was the purpose of this? I assume 15 these letters were eventually finalized, the 16 representation letter from Fortrend? 17 A It was eventually finalized. 18 Q I think I have a copy somewhere back 19 here but we'll get to that. 20 Why was a representation from Fortrend 21 necessary? 22 MR. TURKUS: Objection to the form of</p>

27 (Pages 102 to 105)

Witness: Gary Wilcox

<p style="text-align: right;">Page 106</p> <p>1 the question.</p> <p>2 MR. STERN: I'll join in that.</p> <p>3 A I don't know that it was necessary.</p> <p>4 It's always helpful to, when issuing an opinion,</p> <p>5 to have a representation letter from the party in</p> <p>6 the best position to provide, you know, these</p> <p>7 particular facts. It's not unusual in a</p> <p>8 transaction like a tax-free reorganization to get</p> <p>9 representations from both sides of the</p> <p>10 transaction.</p> <p>11 BY MR. COFFIN:</p> <p>12 Q Go to Government Exhibit 146.</p> <p>13 A If it's here, it's not in order.</p> <p>14 (Whereupon, there were discussions off</p> <p>15 the record.)</p> <p>16 BY MR. COFFIN:</p> <p>17 Q Government Exhibit 146, Mr. Wilcox. Is</p> <p>18 that a facsimile from Jeffrey Furman to you dated</p> <p>19 June 12, 2000?</p> <p>20 A Yes.</p> <p>21 Q And attached to it appears to be</p> <p>22 another draft of the representation letter</p>	<p style="text-align: right;">Page 108</p> <p>1 A Yes.</p> <p>2 Q 134, Paragraph 11, references a \$20,000</p> <p>3 payment to K-Pipe?</p> <p>4 MR. TURKUS: Objection to the form of</p> <p>5 the question.</p> <p>6 A What's your question?</p> <p>7 BY MR. COFFIN:</p> <p>8 Q My question is: Do you recall that</p> <p>9 provision about a \$20,000 payment to compensate</p> <p>10 K-Pipe, or agreement to pay K-Pipe for transaction</p> <p>11 costs up to \$20,000.</p> <p>12 MR. STERN: Objection, form.</p> <p>13 A I do not recall what that is about.</p> <p>14 BY MR. COFFIN:</p> <p>15 Q Okay.</p> <p>16 A I don't know if that is -- reflects the</p> <p>17 final facts or not.</p> <p>18 Q Was there an engagement between</p> <p>19 Fortrend and PwC?</p> <p>20 A No.</p> <p>21 Q Go to Government Exhibit 145, please.</p> <p>22 And turn to DOJ28626, in the bottom right-hand</p>
<p style="text-align: right;">Page 107</p> <p>1 between -- from Fortrend International to PwC; is</p> <p>2 that right?</p> <p>3 A Yes.</p> <p>4 Q Whose handwriting is on the document?</p> <p>5 MR. TURKUS: Objection, lack of</p> <p>6 foundation.</p> <p>7 A It's not my handwriting. And I'm</p> <p>8 assuming that because this fax came from Jeff</p> <p>9 Furman, it's Jeff Furman's handwriting.</p> <p>10 BY MR. COFFIN:</p> <p>11 Q Do you remember receiving this fax?</p> <p>12 A Not specifically, but I don't deny</p> <p>13 that I received it.</p> <p>14 Q Do you remember the changes that were</p> <p>15 proposed by -- that appear to be proposed by</p> <p>16 Mr. Furman in this facsimile?</p> <p>17 MR. TURKUS: Objection to the form of</p> <p>18 the question.</p> <p>19 A I don't remember thinking about these</p> <p>20 specific changes.</p> <p>21 BY MR. COFFIN:</p> <p>22 Q You still have 134 handy there?</p>	<p style="text-align: right;">Page 109</p> <p>1 corner. These are not necessarily in order.</p> <p>2 MR. TURKUS: These all look like a</p> <p>3 bunch of unrelated documents. Is that</p> <p>4 incorrect? I know you have it as one</p> <p>5 exhibit, but none of them -- the page numbers</p> <p>6 don't match on any of them. Or they're not</p> <p>7 consecutive, I should say.</p> <p>8 MR. COFFIN: That's what I just said.</p> <p>9 MR. TURKUS: So are you representing</p> <p>10 this is one document?</p> <p>11 MR. COFFIN: No.</p> <p>12 MR. TURKUS: Okay. That's all I want</p> <p>13 to know.</p> <p>14 MR. COFFIN: Okay.</p> <p>15 BY MR. COFFIN:</p> <p>16 Q Did you get to 28626, Mr. Wilcox?</p> <p>17 A Yes.</p> <p>18 Q There is a reference in the middle of</p> <p>19 the page, or the first wire there, "with credit to</p> <p>20 Cronulla Corporation." Do you see that? For</p> <p>21 \$1,451,000?</p> <p>22 A Okay. Yes, I see it.</p>

28 (Pages 106 to 109)

Witness: Gary Wilcox

<p style="text-align: right;">Page 110</p> <p>1 Q Were you familiar with Cronulla 2 Corporation back in '99? 3 A No. I don't believe I've ever heard of 4 it. 5 Q Okay. And how about below that, 6 similar wire -- identical wire to Ashville 7 International, Limited? 8 A I don't believe I've ever heard of 9 Ashville International. 10 Q If you'll turn the page. Looks like a 11 wire to PricewaterhouseCoopers as represented 12 there in the amount of \$8,743. 13 Do you recall if PricewaterhouseCoopers 14 ever received a wire in that amount on this 15 engagement? 16 A I believe there was an additional 17 payment to PwC, but I don't -- of some amount in 18 this range, but I don't recall when it happened or 19 how. 20 Q If you'll turn the page. There's 21 another reference to a wire transfer to 22 PricewaterhouseCoopers in the amount of \$950,000?</p>	<p style="text-align: right;">Page 112</p> <p>1 amount it intended to pay PwC consistent with its 2 past practice and there was a subsequent 3 adjustment. But I do not recall why that 4 particular amount was determined. I mean, I don't 5 remember the specifics. 6 Q Were those two amounts together the 7 total of the payment that PwC received pursuant to 8 the extraordinary value provision that was in the 9 engagement letter? 10 MR. TURKUS: Objection to the form of 11 the question. The witness has said he 12 doesn't recall the amount of the smaller wire 13 transfer. You're asking him is it his sense 14 that these two taken together are the -- 15 MR. COFFIN: His recollection. 16 MR. TURKUS: Okay. 17 A My recollection is that the two amounts 18 on 6/25 and 6/22 represent the total amount that 19 PwC received pursuant to the extraordinary value 20 provision in the engagement letter and that PwC 21 received no other fees based on rates and hours. 22</p>
<p style="text-align: right;">Page 111</p> <p>1 A Yes. 2 Q Do you recall if PricewaterhouseCoopers 3 received that wire? 4 A I believe they did. 5 Q Related to the Midcoast engagement; is 6 that right? 7 A Yes. 8 Q Do you recall if -- you said there was 9 a separate wire? I think you said that earlier, 10 or additional wire which may have been this \$8,743 11 one? 12 A Yes, I did say that. 13 Q Okay. Do you recall why there were two 14 separate wires to PricewaterhouseCoopers? 15 A As I testified earlier, I believe that 16 Midcoast had instructed Fortrend to pay its tax 17 advisor, PwC, an amount out of the sales proceeds 18 for the asset sale consistent with the past 19 practice of Fortrend to pay tax advisors of the 20 buyer. And I believe that after the closing, it 21 was determined that there was -- that Fortrend 22 determined it made an error in calculating the</p>	<p style="text-align: right;">Page 113</p> <p>1 BY MR. COFFIN: 2 Q Did PwC receive any other fees related 3 to the preparation of the tax opinion that it 4 issued later to Midcoast? 5 A No. Well, not that I'm aware. I don't 6 recall if the time was entered by PwC people and 7 then billed out separately. I don't recall, but I 8 don't believe so. 9 MR. COFFIN: Let's go off the record 10 for a second. 11 (Whereupon, there were discussions off 12 the record.) 13 BY MR. COFFIN: 14 Q Go to 162, please. This is a facsimile 15 from Cathy Coffey to you, Mr. Wilcox, dated 16 January 3rd, 2000; is that right? 17 A Yes. 18 Q Whose handwriting is on the pages that 19 follow? 20 MR. TURKUS: Objection to the form of 21 the question. 22</p>

29 (Pages 110 to 113)

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Witness: Gary Wilcox

<p style="text-align: right;">Page 114</p> <p>1 BY MR. COFFIN: 2 Q Are they your -- is it your 3 handwriting? 4 A Yes, it appears to be mine. 5 Q And in the note portion of the 6 facsimile, Ms. Coffey advises that, "Attached 7 please find the Fortrend rep letter modifications 8 requested. Note that the last attachment e-mail I 9 forwarded requested these adjustments." 10 Was Ms. Coffey making changes to the 11 Fortrend representation letter, or was she simply 12 transcribing in the changes that you made? 13 MR. STERN: Objection to form. 14 MR. TURKUS: Objection to the form of 15 the question. Objection, lack of foundation. 16 A I really don't know. I cannot -- I 17 cannot reconcile the cover note with the fact that 18 I have marked up the rep letter. 19 BY MR. COFFIN: 20 Q Do you know if Ms. Coffey would be 21 proposing changes to the rep letter? 22 MR. TURKUS: Objection to the form of</p>	<p style="text-align: right;">Page 116</p> <p>1 Ms. Coffey would have learned of the facts of this 2 transaction from either me or Tom Palmisano. 3 I should clarify that Ms. Coffey might 4 have had copies of various transaction documents, 5 but I can't say for certain. Or she could have 6 independently learned some of this information. 7 BY MR. COFFIN: 8 Q Turn to Government Exhibit 173, please. 9 You recall seeing this document, 10 Mr. Wilcox? 11 MR. TURKUS: Again, prior to last 12 Friday? 13 BY MR. COFFIN: 14 Q Yes. I'm sorry, prior to last Friday. 15 A I don't recall specifically seeing it, 16 but I note the document is a fax from me, so I 17 think I did see it at one time. 18 Q Read the message portion of the fax 19 cover sheet to yourself, if you would. 20 A Okay. 21 Q The red lined version of the rep letter 22 that is attached, I assume contains changes that</p>
<p style="text-align: right;">Page 115</p> <p>1 the question. Objection, lack of foundation. 2 You mean other than the changes 3 reflected in the handwriting here? 4 MR. COFFIN: Yeah, just in general. 5 BY MR. COFFIN: 6 Q The Fortrend rep letter, was Ms. Coffey 7 proposing changes? Do you know if Ms. Coffey was 8 proposing changes to the Fortrend rep letter for 9 any reason? 10 A There were probably several 11 communications between me and Ms. Coffey where I 12 gave her comments and perhaps she gave me comments 13 on the letter, but I can't think of any specific 14 occasion on which she would have proposed changes. 15 I'm sure that she provided comments on the various 16 drafts. 17 Q Would Ms. Coffey have an independent 18 knowledge of the facts of the project that you 19 were working on with Midcoast? 20 MR. TURKUS: Objection, lack of 21 foundation. 22 A I think I testified earlier that</p>	<p style="text-align: right;">Page 117</p> <p>1 were requested by Mr. Furman; is that right? 2 MR. TURKUS: Objection to the form of 3 the question. 4 Are you asking him his recollection, or 5 whether he advised that from reading the 6 cover letter? 7 MR. COFFIN: His recollection. 8 A I don't know without really going 9 through the complete sequence in order of these 10 faxes because it's just as possible that that's a 11 change that I was proposing to him. I can't say 12 for certain. It appears from the cover note that 13 I was explaining to Mr. Furman why those changes 14 were made which would suggest I made the change, 15 not him, but I can't say. 16 BY MR. COFFIN: 17 Q If you turn to the PwC066. Item No. 2 18 at the top. 19 A Okay. 20 Q Do you recall why the reference to 21 Signal Capital Associates, LP, was stricken out of 22 the letter?</p>

30 (Pages 114 to 117)

Witness: Gary Wilcox

<p style="text-align: right;">Page 118</p> <p>1 MR. TURKUS: Objection, lack of 2 foundation. Objection to the form of the 3 question. 4 A No, I don't recall. I do recall that 5 we were not necessarily knowledgeable about the, 6 you know, the ownership structure of K-Pipe 7 Holdings Partners, LP. It may be that we put some 8 facts in that we thought were true and it turned 9 out they weren't true. I really don't know. But 10 I don't recall any specific reason for deleting 11 the reference to Signal Capital Associates other 12 than taking somebody's comment. 13 Q Were you familiar with Signal Capital 14 Associates, LP, back in 1999; do you recall? 15 A No. Did not. Had never heard of it. 16 Q Okay. 176. Government No. 176. Do 17 you have it, Mr. Wilcox? 18 A Yes. 19 Q Does this represent a fax from 20 Mr. Furman to you? 21 A That's what it purports to be. 22 Q And do you recall receiving this -- I</p>	<p style="text-align: right;">Page 120</p> <p>1 transaction? Why so late after the November of 2 '99 transaction? 3 MR. TURKUS: Objection to the form of 4 the question. 5 A Why so late? I believe one of the 6 earlier documents that you had me testify about 7 indicated that a form of the representation letter 8 had been given to Craig Hoffman prior to the 9 closing. And Mr. Hoffman reviewed the letter and 10 agreed that Fortrend would be in a position to 11 provide us -- provide PwC a signed representation 12 letter. 13 As I recall, Mr. Hoffman, at some point 14 after the closing, left Fortrend -- I have no idea 15 where he went -- and I was then forced to deal 16 directly with Mr. Furman who I really had not had 17 any direct dealings with other than I believe he 18 participated in a conversation with Mr. Hoffman 19 early in the process. And I believe I had just 20 took time to get Mr. Furman's attention to provide 21 comments and review the rep letter. 22 That's my only -- that's all I can</p>
<p style="text-align: right;">Page 119</p> <p>1 assume this is the final signed copy of the 2 Fortrend representation letter? 3 MR. TURKUS: Is that a question? 4 MR. COFFIN: Yes. 5 BY MR. COFFIN: 6 Q Is that correct? 7 MR. TURKUS: Do you want him to comment 8 on what it is? Or your assumption? 9 BY MR. COFFIN: 10 Q On what it is, please. 11 A I think I can only say what it appears 12 to be. It appears to be a final version of the 13 rep letter because it is signed by Mr. Furman. 14 BY MR. COFFIN: 15 Q Okay. It's dated July -- the fax cover 16 is dated July 10, 2000, as is the rep letter, 17 correct? 18 A Yes. 19 MR. TURKUS: The document speaks for 20 itself. Objection. 21 BY MR. COFFIN: 22 Q Why dated after the November '99</p>	<p style="text-align: right;">Page 121</p> <p>1 recall about why it would have taken this long. 2 Q Okay. 3 MR. COFFIN: Karl, do you have 181? 4 MR. STERN: No. 5 BY MR. COFFIN: 6 Q Turn to 181, Government 181, please. 7 Do you recognize this document, 8 Mr. Wilcox? 9 A I recognize this as a draft 10 representation letter from Midcoast to PwC. 11 Q And whose handwriting is on the 12 document? 13 MR. TURKUS: Objection, lack of 14 foundation. 15 Are you asking him to just read what it 16 says on the first page, or are you asking him 17 if he recognizes the handwriting? 18 MR. COFFIN: Yeah, just recognize the 19 handwriting. 20 A I recognize the handwriting on the 21 first page as my handwriting. But on subsequent 22 pages, some of the handwriting is not mine.</p>

31 (Pages 118 to 121)

Witness: Gary Wilcox

<p style="text-align: right;">Page 122</p> <p>1 BY MR. COFFIN:</p> <p>2 Q Do you know whose handwriting it might</p> <p>3 be?</p> <p>4 A I believe it is Ian Schacter's</p> <p>5 handwriting, because the first page of the fax</p> <p>6 indicates that this draft reflected Ian Schacter's</p> <p>7 revisions.</p> <p>8 Q Did you discuss making changes to this</p> <p>9 letter with Ian Schacter?</p> <p>10 A I don't recall specifically discussing</p> <p>11 making changes with Ian Schacter, but it would</p> <p>12 seem reasonable that we did discuss this by phone</p> <p>13 as well as by fax, exchanges of faxes.</p> <p>14 Q Why is it -- why do you think it's</p> <p>15 reasonable?</p> <p>16 MR. TURKUS: Objection to the form of</p> <p>17 the question.</p> <p>18 A I'm doing my best to try to provide an</p> <p>19 explanation, a fax that, frankly, I don't remember</p> <p>20 specifically. And I'll stop doing that if you</p> <p>21 don't want those kinds of answers.</p> <p>22</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. COFFIN: What?</p> <p>2 MR. TURKUS: I'm asking you what you</p> <p>3 mean by the word "independently," and how</p> <p>4 this witness could have that knowledge.</p> <p>5 MR. COFFIN: I'm asking him was</p> <p>6 Mr. Schacter involved, I guess, in the</p> <p>7 day-to-day negotiations and involvement of</p> <p>8 the transaction.</p> <p>9 MR. TURKUS: No objection to that</p> <p>10 question.</p> <p>11 A Well, first of all, I've never said</p> <p>12 that I was involved in day-to-day negotiations.</p> <p>13 We were involved in providing tax</p> <p>14 advice, and Tom Palmisano and I were the ones from</p> <p>15 PwC primarily involved in providing tax advice</p> <p>16 through the transaction, but we conferred on a</p> <p>17 regular basis with Ian Schacter and Cathy Coffey</p> <p>18 and they were knowledgeable about the transaction</p> <p>19 based on our conversations with them. I don't</p> <p>20 recall that Ian or Cathy ever attended a meeting</p> <p>21 with Midcoast or joined a phone conversation with</p> <p>22 Midcoast.</p>
<p style="text-align: right;">Page 123</p> <p>1 BY MR. COFFIN:</p> <p>2 Q No.</p> <p>3 A I don't remember the conversation with</p> <p>4 Ian Schacter.</p> <p>5 Q Okay. I was just asking why it would</p> <p>6 have been reasonable. Is it something you</p> <p>7 normally did, was send these rep letters up to Ian</p> <p>8 Schacter?</p> <p>9 A Because he was a colleague of mine and</p> <p>10 we talked frequently, so it would be common as a</p> <p>11 courtesy for us to have spoken personally in</p> <p>12 addition to exchanging faxes because it was pretty</p> <p>13 simple just to call him up and talk to him about</p> <p>14 it.</p> <p>15 Q Okay. Would Mr. Schacter have</p> <p>16 independently had any knowledge of the facts</p> <p>17 surrounding the Midcoast project?</p> <p>18 MR. TURKUS: Objection to the form of</p> <p>19 the question.</p> <p>20 MR. STERN: Objection to the form.</p> <p>21 MR. TURKUS: What do you mean by</p> <p>22 "independently"?</p>	<p style="text-align: right;">Page 125</p> <p>1 BY MR. COFFIN:</p> <p>2 Q Do you know if Mr. Schacter was</p> <p>3 familiar with Fortrend prior to PwC engaging in</p> <p>4 these -- PwC working for Midcoast in this</p> <p>5 engagement?</p> <p>6 A I believe that Mr. Schacter had heard</p> <p>7 of Fortrend. That's all I remember.</p> <p>8 Q You don't recall why, how you know that</p> <p>9 Mr. Schacter had heard of Fortrend?</p> <p>10 MR. TURKUS: Objection, asked and</p> <p>11 answered.</p> <p>12 A No, I don't. I don't know whether it's</p> <p>13 because of his own experience with Fortrend or</p> <p>14 whether he heard something about them from someone</p> <p>15 else. I don't know. I do recall that he was</p> <p>16 familiar with them at some level.</p> <p>17 BY MR. COFFIN:</p> <p>18 Q Government Exhibit 186, please.</p> <p>19 MR. COFFIN: Do you have that?</p> <p>20 MR. TURKUS: Yes.</p> <p>21 BY MR. COFFIN:</p> <p>22 Q This is an e-mail from you, Mr. Wilcox,</p>

32 (Pages 122 to 125)

Witness: Gary Wilcox

<p style="text-align: right;">Page 126</p> <p>1 to Mr. Whitten and Mr. Palmisano dated January 18, 2 2001, correct? 3 A Yes. 4 Q Subject? 5 MR. TURKUS: You mean the first part of 6 it? 7 MR. COFFIN: Yes. Yes, I'm sorry. 8 BY MR. COFFIN: 9 Q Looks like there's an attachment to it. 10 The subject matter of the e-mail shows to be "IRS 11 warning on Midco transactions." And your comment, 12 first comment, is, "Do you really have to issue 13 that opinion? Just kidding." 14 Do you recall drafting this e-mail? 15 A I don't recall drafting this e-mail, 16 but I'm not denying that I did. 17 Q Do you recall receiving the IRS notice, 18 the first time you may have seen the IRS Notice 19 2001-16? 20 MR. TURKUS: Are you asking him if 21 recalls receiving it, or does he recall the 22 first time he saw it?</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. TURKUS: But you didn't ask him 2 about the conversation he had; you asked him 3 about the conversation he would have had. 4 MR. COFFIN: Oh, I'm sorry. 5 MR. STERN: That's an expression. 6 MR. TURKUS: Well, objection to the 7 expression and the form of the question. 8 BY MR. COFFIN: 9 Q Well, I'll just put it this way: Were 10 you fixing to have a conversation? 11 MR. TURKUS: No objection. 12 A I understand that. I'm from Texas. 13 My memory is very faint on this. I 14 don't know whether it's based on actual memory at 15 this point or a belief that this conversation 16 seems like something that should have taken place 17 soon after this notice, but I, like I say, I don't 18 know how to answer other than I'm fairly confident 19 there was a conversation. I do not remember what 20 was said. I can certainly guess as to what was 21 said, and I'm sure it was informing the client 22 that this notice was released. Beyond that, I</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. COFFIN: The first time he saw it. 2 A No, I don't recall, but it does appear 3 that my e-mail is on January 18th, and the notice 4 came out from the IRS on January 18th. 5 BY MR. COFFIN: 6 Q Do you recall ever talking to anybody 7 at Midcoast about this notice? 8 MR. TURKUS: At any time? 9 MR. COFFIN: At any time. 10 A I can't say when, but I am fairly 11 confident that we had a conversation with Richard 12 Robert about this notice. I just don't know how 13 soon after January 18th that conversation took 14 place, but I'm fairly confident it did. 15 BY MR. COFFIN: 16 Q Do you recall the details of the 17 conversation you had with Mr. Robert, or you just 18 know it happened? 19 MR. TURKUS: The conversation he would 20 have had or the conversation he had? 21 MR. COFFIN: I thought he said he had 22 had one.</p>	<p style="text-align: right;">Page 129</p> <p>1 don't remember. 2 BY MR. COFFIN: 3 Q Government Exhibit 189. Are you 4 familiar with this memorandum, Mr. Wilcox? 5 A Yes, I remember this memo. 6 Q Why did you -- or did you prepare this 7 memorandum? 8 A I'm sure because my name is on it that 9 I participated in preparing it. I don't know that 10 I was the only one who prepared it. 11 Q Do you know why it was prepared? 12 A Well, I don't remember the 13 circumstances that -- 14 MR. TURKUS: Could we take a break for 15 just a minute? 16 MR. COFFIN: Sure. 17 (Whereupon, there was a break from 18 2:34 p.m. until 2:39 p.m.) 19 (Whereupon, the last question was 20 read.) 21 A I believe that under the law at the 22 time in early 2001, if the IRS listed a</p>

33 (Pages 126 to 129)

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<p style="text-align: right;">Page 130</p> <p>1 transaction and a taxpayer had previously did a 2 transaction that was substantially similar, the 3 taxpayer was required to file a disclosure 4 statement even if the tax return for that 5 transaction had already been filed. 6 So my recollection is that this advice 7 was given in the context of determining or 8 advising Midcoast on whether it was required to 9 file a disclosure statement in connection with the 10 transaction that closed in 1999. 11 BY MR. COFFIN: 12 Q In the second paragraph, it says, "Our 13 client, Midcoast Energy Resources, purchased 14 assets on November 9, 1999, from an entity 15 commonly known as an intermediary." 16 Do you recall what you meant by "an 17 entity commonly known as an intermediary"? 18 A No, but I can tell you what I believe 19 it means to me sitting here today. 20 Q Okay. 21 A I believe it means entity that, you 22 know, buys the stock of corporations and later</p>	<p style="text-align: right;">Page 132</p> <p>1 A No, I'm not aware of any such claim. 2 Q Okay. Let's go to 201, Government 201. 3 Mr. Wilcox, do you recognize Government 4 Exhibit 201 as your notes? 5 A For the most part, it's my notes, but 6 it does appear there are several diagrams in here 7 that do not appear to be my handwriting. 8 Q Do you recognize the handwriting on 9 these pages? 10 A For the most part, I recognize that the 11 handwriting is mine. I just said there -- but it 12 does appear -- and I can identify pages if you 13 want. 14 Q Yeah, that would be great. 15 A On page 1278, the handwriting appears 16 to be mine, but that diagram in the middle is not 17 my handwriting. I don't know where that came 18 from. 19 On page 1282, the handwriting at the 20 bottom appears to be mine, but that is not my 21 diagram. 22 Q Is that all, Mr. Wilcox?</p>
<p style="text-align: right;">Page 131</p> <p>1 causes those corporations to sell assets. 2 Q In the memorandum, I believe, PwC 3 concluded that the disclosure statement need not 4 be attached to Midcoast's tax return; is that 5 right? 6 A It concluded that it could advise 7 Midcoast that there -- I'm reading the language -- 8 is an appropriate basis for not attaching a 9 disclosure statement. 10 Q Did PwC advise Midcoast of its 11 conclusion? 12 A I assume it did, but I don't recall 13 specifically delivering that advice. It may have 14 been Bob Whitten who gave that advice to the 15 client because he was the local office engagement 16 partner. 17 Q Do you know if Midcoast has made a 18 claim against PwC resulting from the IRS 19 examination of Midcoast's 1999 tax return? 20 A What kind of claim? 21 Q A claim that would be seeking damages 22 from PwC?</p>	<p style="text-align: right;">Page 133</p> <p>1 A Yes. That appears to be the only 2 portions that are not my handwriting. 3 Q Back in 1999, was it your habit of 4 taking notes? 5 MR. TURKUS: Objection to the form of 6 the question. 7 A I wouldn't call it a habit; I would 8 call it a practice. 9 BY MR. COFFIN: 10 Q Is that something you still do today, 11 take notes of discussions, meetings? 12 MR. TURKUS: Objection to the form of 13 the question. 14 A Can you explain to me why that's 15 relevant, what I do today? 16 BY MR. COFFIN: 17 Q Well, I just want to know if this is 18 your practice. You said it's your practice. 19 A I'm not going to answer that question 20 unless you can explain to me why it's relevant to 21 why we're here today. 22 MR. COFFIN: Do you agree with him that</p>

34 (Pages 130 to 133)

Witness: Gary Wilcox

<p style="text-align: right;">Page 134</p> <p>1 he doesn't need to answer the question?</p> <p>2 MR. TURKUS: I didn't instruct him not</p> <p>3 to answer, but I don't think it has any</p> <p>4 relevance whatsoever. You asked him was it</p> <p>5 his practice at the time; he said it was.</p> <p>6 You asked him was it his habit; he said no,</p> <p>7 it was his practice. So what difference does</p> <p>8 it make what he does today?</p> <p>9 MR. COFFIN: I just want to know if</p> <p>10 that's what he does.</p> <p>11 MR. TURKUS: Well, you might want to</p> <p>12 know a lot of things, but it has nothing to</p> <p>13 do with your case. I understand why he's</p> <p>14 objecting. He now works for a different</p> <p>15 entity. He's now serving as a lawyer. He</p> <p>16 wasn't a lawyer then; he was working for an</p> <p>17 accounting firm.</p> <p>18 I just don't think it really has any</p> <p>19 relevance. If you want to go to a judge on</p> <p>20 it, go right ahead. I didn't instruct him</p> <p>21 not to answer, but I certainly understand why</p> <p>22 he's reluctant to provide information about</p>	<p style="text-align: right;">Page 136</p> <p>1 they were fresh in his mind?</p> <p>2 MR. TURKUS: Objection to the form of</p> <p>3 the question.</p> <p>4 A I'm not sure how to answer that</p> <p>5 question because if I write something down, it's</p> <p>6 obviously something that I'm thinking. So,</p> <p>7 therefore, it must be fresh in my mind. I don't</p> <p>8 know how else to answer that.</p> <p>9 Do I write all notes contemporaneous</p> <p>10 with the thought process? I don't know.</p> <p>11 I think it's fair to say that some of</p> <p>12 these notes are thoughts that I would write down</p> <p>13 at a quiet moment. It's not necessarily during</p> <p>14 the course of a conversation. Some of the notes</p> <p>15 might be during the course of a conversation I'm</p> <p>16 having.</p> <p>17 There was a lot to think about in this</p> <p>18 transaction, a lot of facts, and I think that is</p> <p>19 part of the reason why there are many notes.</p> <p>20 There were a lot of facts to be in command of</p> <p>21 throughout this transaction.</p> <p>22</p>
<p style="text-align: right;">Page 135</p> <p>1 how he represents clients today in a</p> <p>2 different firm.</p> <p>3 BY MR. COFFIN:</p> <p>4 Q I'll move on.</p> <p>5 With regard to Exhibit No. 201, were</p> <p>6 your notes written down when fresh in your memory?</p> <p>7 MR. TURKUS: Objection to the form of</p> <p>8 the question.</p> <p>9 You mean all of these notes, these</p> <p>10 hundreds of pages of notes?</p> <p>11 MR. COFFIN: Yeah.</p> <p>12 MR. TURKUS: You want him to make a</p> <p>13 general statement that all of these notes</p> <p>14 were prepared when things were fresh in his</p> <p>15 mind?</p> <p>16 MR. COFFIN: Well, it was his practice.</p> <p>17 MR. TURKUS: That's not the same</p> <p>18 question.</p> <p>19 MR. COFFIN: Well, I'm asking. He can</p> <p>20 tell me.</p> <p>21 MR. TURKUS: What is the question?</p> <p>22 MR. COFFIN: Were the notes made while</p>	<p style="text-align: right;">Page 137</p> <p>1 BY MR. COFFIN:</p> <p>2 Q Okay. On the first page, 1271, would</p> <p>3 you read the first line there, please?</p> <p>4 A The first line appears to say,</p> <p>5 "No. 1" -- well, looks like something's been</p> <p>6 interposed, but No. 1 is, "Avoid advance</p> <p>7 discussions between S and B before LOI."</p> <p>8 Q What's the -- well, the title above</p> <p>9 that, what does that say? Is that "Midco</p> <p>10 Considerations"?</p> <p>11 A Yes.</p> <p>12 Q And then Item 2?</p> <p>13 A "Avoid signed" -- now, do you want me</p> <p>14 to read it as it appears on the page? Some of</p> <p>15 these words are symbols and shorthand. What are</p> <p>16 you asking me to do?</p> <p>17 Q Read it not as it appears but what you</p> <p>18 perceive that appears to say.</p> <p>19 A "Avoid signed contract between</p> <p>20 intermediary and buyer when intermediary contracts</p> <p>21 with seller."</p> <p>22 Q Okay. Go on.</p>

35 (Pages 134 to 137)

Witness: Gary Wilcox

<p style="text-align: right;">Page 138</p> <p>1 A No. 3, "Intermediary retains 2 significant assets and liabilities." 3 Keep going? 4 Q Yes, please. 5 A "Intermediary not liquidate 6 corporation." 7 No. 5, "Report to government and third 8 parties consistently." 9 No. 6, "Pricing. Midco take stock 10 price and increase for premium. Premium is equal 11 to 5 percent of step-up." 12 No. 7, "Avoid indemnities or other 13 connections between seller and buyer." 14 No. 8, "Intermediary must be actively 15 involved in negotiations." 16 No. 9, "Separate contract signings, 17 breakup fee, risk, separate closings, disaster 18 risk, bankruptcy risk, et cetera." 19 No. 10, "Describe the press release as 20 simply purchase of business." 21 No. 11, "Hart Scott Rodino." I think 22 this says "which does not apply when intermediary</p>	<p style="text-align: right;">Page 140</p> <p>1 MR. COFFIN: Yes, sir. 2 A No. I think the -- I have referred to 3 Midco as a convenient way of explaining the role 4 of an intermediary. But I don't believe that 5 not -- that either term has a single meaning 6 associated with it, and I believe that the 7 difficulty with this area is that distinguishing 8 from, you know, an entity that is truly buying 9 stock and then selling the assets from one that is 10 just a conduit, and where do you draw the line 11 because we all know that, you know, there are 12 companies out there, and they've been out there 13 since the '80s, that buy companies and then sell 14 off the assets. Anybody who's seen Gordon Gekko 15 knows that that happens. 16 And so I think that those companies, 17 what they do is very similar to what happened in 18 this case. 19 And so calling a company a Midco or an 20 intermediary, in my view, is not the same as 21 concluding that the entity should be disregarded 22 for tax purposes. It simply describes the fact</p>
<p style="text-align: right;">Page 139</p> <p>1 buys because it's exempt, but it does apply -- but 2 HSR does apply when intermediary sells assets." 3 No. 12, "Intermediary represented by 4 separate counsel at meetings, et cetera. 5 Intermediary independently financed the stock 6 purchase." 7 Q Are the terms "Midco" and 8 "intermediary" synonymous, in your view? 9 A Could I ask for -- 10 Q You need a break? 11 THE WITNESS: Well, can I ask you a 12 question? 13 MR. TURKUS: Sure. 14 (Whereupon, there was a break from 15 2:54 p.m. until 2:56 p.m.) 16 (Whereupon, the last question was 17 read.) 18 A So this question is not in reference to 19 a document; it's just a general question? 20 BY MR. COFFIN: 21 Q In relation to Government Exhibit 201. 22 MR. TURKUS: Page 1271?</p>	<p style="text-align: right;">Page 141</p> <p>1 that they may acquire the stock of an entity and 2 then subsequently sell off the parts. 3 Q Okay. Are you finished? 4 A Yes. 5 Q Okay. Go back to Government Exhibit 6 189 real quick. I'm sorry. Backwards. This is 7 the memorandum on the tax statement disclosure. 8 Turn to the second page of that memorandum. 9 Second paragraph, would you read that 10 paragraph to yourself, please? 11 A Okay. 12 Q The sentence -- the second to the last 13 sentence says, "Neither the seller nor Midcoast 14 has any knowledge of whether or how the 15 intermediary would be able to offset gain from the 16 sale of assets." 17 Do you know if that's a true statement? 18 A As far as I know, that's a true 19 statement or I wouldn't have signed a memo with 20 this statement in here. 21 Q Did PwC have any knowledge at the time 22 of whether or how the intermediary would be able</p>

36 (Pages 138 to 141)

Witness: Gary Wilcox

<p style="text-align: right;">Page 142</p> <p>1 to offset gain from the sale of assets?</p> <p>2 A No idea. PwC had no idea.</p> <p>3 Q Do you recall ever inquiring to anyone</p> <p>4 how the intermediary would be able to offset the</p> <p>5 gain from the sale of assets in this transaction?</p> <p>6 A I believe I might have asked Craig</p> <p>7 Hoffman when I met him in person at the</p> <p>8 October 23rd meeting. But I don't remember</p> <p>9 hearing anything specific from him. I sense that</p> <p>10 it probably wasn't, you know, an area that I</p> <p>11 needed to know in order to do my job and what they</p> <p>12 did was not -- it wasn't part of my business. So</p> <p>13 I don't believe that the conversation went very</p> <p>14 far.</p> <p>15 Q Okay. Back to Government Exhibit 201,</p> <p>16 first page.</p> <p>17 Do you know why you would have -- do</p> <p>18 you recall why you would have written these down?</p> <p>19 A Where are we?</p> <p>20 Q Government 201, your handwritten notes?</p> <p>21 A Which page?</p> <p>22 Q The first page.</p>	<p style="text-align: right;">Page 144</p> <p>1 MR. TURKUS: You're asking whether he</p> <p>2 recalls discussing any of these</p> <p>3 considerations or all of them?</p> <p>4 MR. COFFIN: Any of them.</p> <p>5 A Like I said, I don't think this list</p> <p>6 was prepared in connection with the Midcoast</p> <p>7 transaction. It -- I think it was prepared either</p> <p>8 before or after that transaction -- I don't know</p> <p>9 which -- and just reflected my general thoughts on</p> <p>10 Midco transactions. But I did, from time to time,</p> <p>11 discuss with the client what was important in</p> <p>12 order to maintain their tax position.</p> <p>13 BY MR. COFFIN:</p> <p>14 Q Okay. Item No. 6 on that page,</p> <p>15 pricing, "Midco takes stock price and increase for</p> <p>16 premium. Premium equals 5 percent of step-up."</p> <p>17 Do you recall talking to Midcoast about</p> <p>18 that type of pricing on the transaction that it</p> <p>19 engaged in with Fortrend?</p> <p>20 A Yes. I remember having -- it probably</p> <p>21 would have been a conversation between PwC and</p> <p>22 Midcoast on September 13 or thereabouts in Kansas</p>
<p style="text-align: right;">Page 143</p> <p>1 A I am not confident that these notes</p> <p>2 were written down in connection with the Midcoast</p> <p>3 transaction. They may well have been written down</p> <p>4 as my own personal list of issues to think about,</p> <p>5 and my notes simply were put into the Midcoast</p> <p>6 file, because I don't recall writing any of this</p> <p>7 in connection with the Midcoast transaction.</p> <p>8 It was not uncommon as an M&A person in</p> <p>9 the PwC office to get questions all the time about</p> <p>10 how to structure transactions, and it was common</p> <p>11 for us to keep our notes and thoughts collected so</p> <p>12 that we were in a position to give advice.</p> <p>13 Q Go to 1276, please.</p> <p>14 A Okay.</p> <p>15 MR. COFFIN: Let's go off the record.</p> <p>16 (Whereupon, there was a break from</p> <p>17 3:05 p.m. until 3:11 p.m.)</p> <p>18 BY MR. COFFIN:</p> <p>19 Q Mr. Wilcox, sorry to keep going</p> <p>20 backwards. Back to 1271 on 201, the Midco</p> <p>21 considerations. Do you recall discussing these</p> <p>22 considerations with Midcoast at all?</p>	<p style="text-align: right;">Page 145</p> <p>1 City after we learned from Fortrend how they would</p> <p>2 price an asset sale.</p> <p>3 Q Okay. Do you recall -- do you recall</p> <p>4 specifics of that conversation, or are you just</p> <p>5 assuming that it occurred during that meeting?</p> <p>6 I'm looking for -- do you recall what Midcoast's</p> <p>7 representatives, what their reaction was to that</p> <p>8 pricing structure?</p> <p>9 A I don't. I, again, am fairly confident</p> <p>10 that we would have discussed what we learned from</p> <p>11 Fortrend with, at a minimum, Richard Robert, but I</p> <p>12 don't remember the specific conversation or what</p> <p>13 his reaction would have been. Obviously because</p> <p>14 the so-called Midco alternative was pursued,</p> <p>15 Richard Robert decided to pursue it, but I don't</p> <p>16 remember anything other than that.</p> <p>17 Q Okay. Turn over to PwC1276, please.</p> <p>18 At the top of that page, it says "Favorable</p> <p>19 Facts," correct?</p> <p>20 A Yes.</p> <p>21 Q Do you recall if you wrote these notes</p> <p>22 in relation to the Midcoast transaction?</p>

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<p style="text-align: right;">Page 146</p> <p>1 A Yes, these notes relate to the Midcoast 2 transaction. 3 Q In the first sentence, first line of 4 notes underneath the heading "Favorable Facts," it 5 says, "Contractual risk, 24 hours, 1 million." Is 6 that \$1 million? 7 A Yes. 8 Q Okay. Tell me -- I assume that's a 9 favorable fact; is that correct? Do you determine 10 it to be? 11 A Everything in this list, presumably, is 12 a favorable fact. 13 Q And why is that a favorable fact? 14 A I don't remember the details of this, 15 but there was a -- it had something to do with the 16 way in which the escrow -- escrows were funded. 17 And there was a 24-hour period where, if the deal 18 fell through, Fortrend would be exposed to a 19 million dollar contractual risk to Langley. As I 20 recall, it was a difference between a \$15 million 21 amount and a \$14 million amount, but I don't 22 remember the context.</p>	<p style="text-align: right;">Page 148</p> <p>1 challenge the position. But even apart from 2 whether the government ever challenged the 3 position, they are favorable facts to support 4 PwC's opinion and to support the taxpayer's 5 position on its tax return. 6 Q Okay. Turn the page, please. At the 7 top, the heading is "Unfavorable Facts"; is that 8 correct? 9 A Yes. 10 Q So I would assume that this is a -- 11 these are unfavorable facts to the taxpayer's 12 position; is that correct? 13 A They could be. But, again, it all 14 depends on all facts and circumstances. 15 Q Okay. Can you describe what the tax 16 indemnity to Langley was? Is that something we've 17 already talked about? 18 A I think I was referring there to the 19 simple fact that the stock purchase agreement 20 contains a tax indemnity which, on its face, is 21 going to attract someone's attention, but which 22 I've already explained doesn't have a lot of teeth</p>
<p style="text-align: right;">Page 147</p> <p>1 Q Okay. And why would that contractual 2 risk be a favorable fact? 3 A Again, believing that if the government 4 were to look at this, they would argue that -- 5 they may argue several things, but one of the 6 possible arguments, we believe, was that the 7 government would contend that Fortrend should be 8 ignored. And, as I've said earlier, the more 9 activity that Fortrend has as a participant in the 10 transaction, the more activity that it has after 11 the transaction as well as, in this case, risks 12 that it incurred in connection with its role. All 13 of those are favorable facts supporting the 14 position that they should not be ignored. 15 Q So this listing is a listing of facts 16 that you felt were favorable in the event that the 17 government challenged the transaction; is that 18 correct? 19 A Well, let me state it differently 20 because I -- these are -- yes, that is true that 21 they are favorable facts to support the taxpayer's 22 position in the event the government were to</p>	<p style="text-align: right;">Page 149</p> <p>1 in it because I don't think it resulted in any 2 exposure to Midcoast. 3 Q Okay. How about the next item? 4 A The next item refers to a Midcoast 5 guarantee of KPC's guarantee of the tax indemnity. 6 Again, I don't -- I would put that in the 7 unfavorable category, not because I believe 8 Midcoast had any exposure to risk as a result of 9 that guarantee, but the mere fact that it can be 10 linked in some contractual way, albeit directly, 11 but, nevertheless, linked in some contractual way 12 to Langley would be perceived by the government as 13 an -- as a favorable fact for them. 14 Q Okay. The next item, "Fortrend 15 inability to borrow without escrowed funds from 16 Midcoast"? 17 A I will say that these are not 18 necessarily conclusions on my part because, 19 frankly, I don't know what Fortrend's ability or 20 inability to borrow was in connection with this 21 transaction. I wasn't privy to any of those 22 facts.</p>

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Witness: Gary Wilcox

<p style="text-align: right;">Page 150</p> <p>1 I think what I was referring to here 2 was the perception that the government might 3 reach -- the conclusion that the government would 4 reach that Fortrend was unable to borrow without 5 getting money from Midcoast through the escrow. 6 Q Okay. The next item. Does that say 7 "Continuing Relationship"? 8 A I think, again, maybe that's more of an 9 optical kind of fact in that if Langley and 10 Midcoast are connected in some way contractually 11 or economically on a going forward basis, that 12 might suggest that they were dealing with each 13 other again. 14 Q Okay. Go ahead. 15 A We're just coming up with a list of 16 what could possibly cut against the taxpayer's 17 position, and I was weighing that against the 18 facts that I viewed as favorable. 19 Q Okay. Were those favorable facts and 20 unfavorable facts communicated to Midcoast? 21 A I think we've already -- I've already 22 testified about certain communications, such as</p>	<p style="text-align: right;">Page 152</p> <p>1 Q Okay. And did Langley participate? 2 Says, "Spoke with Fortrend, re fee." 3 Did Langley participate in that 4 conversation? 5 A No. 6 Q And it says, "Tentative agreement to go 7 forward with Midco." 8 Who reached the agreement at that 9 point? 10 A I think decisions were made by both 11 Langley and Midcoast. Midcoast had been a bidder 12 along with other bidders to buy the stock. 13 Midcoast, I don't believe agreement is 14 necessarily -- reflects what happened legally. 15 There was no agreement, per se, but Midcoast 16 decided that it would delay pursuing its bid to 17 buy stock and instead pursue a purchase of assets 18 from Fortrend. Langley decided that it would 19 entertain a bid from Fortrend to buy stock, and I 20 think there were decisions made by both Langley 21 and Midcoast but not an agreement between anyone. 22 Q All right. 1283, please. At the top</p>
<p style="text-align: right;">Page 151</p> <p>1 the tax indemnity which you asked me about. I 2 can't say that every one of these points were 3 communicated but many of them definitely were. 4 Q Okay. Turn to PwCP1280, please. The 5 top it says "Fact Background." 6 Do you see that? 7 A Yes. 8 Q There's an entry there, 9/12. Could 9 you read that note for me, please? 10 A The 9/12 line appears to say "PW 11 meeting with Midcoast. Seller present. Spoke 12 with Fortrend, re fee. Very limited discussions 13 with seller. Tentative" -- I think that means 14 "Tentative agreement to go forward with Midco." 15 Q Were you involved in that meeting with 16 Midcoast on that day, or was there a meeting with 17 Midcoast on that day? 18 A 9/12 I believe refers to the meeting in 19 Kansas City where I was present. 20 Q Okay. And "seller present," does that 21 mean Langley was there? 22 A Yes, sir, as I've said.</p>	<p style="text-align: right;">Page 153</p> <p>1 it says "Tax Issues," correct? 2 A Yes. 3 Q And on this page, does "I" translate to 4 intermediary? 5 A Yes. Again, I don't know if that -- 6 these notes were prepared in connection with the 7 Midcoast transaction. They may have been, they 8 may not have been. I don't know. But, yes, "I" 9 refers to intermediary. 10 Q And "S" refers to seller and "B," 11 buyer, I take it? 12 A Yes, yes. 13 Q "Easy to avoid Bollinger." 14 Do you see that note? 15 A Yes. 16 Q What is Bollinger? 17 A It's a U.S. Supreme Court case on the 18 law of agency. 19 Q Okay. Turn to 1285, please. There's 20 an entry there, says "9/25, Jeff Furman"; is that 21 correct? 22 A Yes.</p>

39 (Pages 150 to 153)

Witness: Gary Wilcox

<p style="text-align: right;">Page 154</p> <p>1 Q You had a conversation with Mr. Furman 2 on that date? 3 A I don't recall specifically, but it 4 would appear that I may have. It's also not clear 5 whether he was the only one on the phone -- if 6 there was a phone conversation, that he was the 7 only one. 8 Q Would that have been a conversation on 9 September 25 of 1999 or on a later date? 10 MR. TURKUS: As opposed to a third 11 possibility, an earlier date? 12 MR. COFFIN: Yes. I thought he 13 testified he didn't know of Fortrend before 14 September of '99. 15 MR. TURKUS: This is September 25th. 16 Could have been -- I'm thinking could have 17 been on that date, before that date, or after 18 that date. 19 MR. COFFIN: Okay. 20 MR. TURKUS: You only asked two of the 21 three possibilities, which is fine. I just 22 want to make clear what you were asking.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q Could you explain what these notes are 2 in relation to? 3 A I can't say exactly whether this was in 4 2000 or 2001, but I believe that this is a 5 conversation I had with Richard Robert in 6 February -- on February 23rd, because that seems 7 to be indicated by the date. 8 The first line, "Has been a request to 9 supply with copies of opinion." I believe this 10 was a request by Enbridge in connection with its 11 acquisition of Midcoast because I can't think of 12 any other request that would have been made for 13 our opinion. 14 Q So that's what -- where it says, "Close 15 week after next," that would have been Enbridge's 16 acquisition of Midcoast? 17 MR. TURKUS: Objection to the form of 18 the question. 19 A I don't know for sure, but that seems 20 to make sense to me as I'm sitting here. 21 BY MR. COFFIN: 22 Q And next line says, "Penalty only with</p>
<p style="text-align: right;">Page 155</p> <p>1 A This would have been 1999. 2 BY MR. COFFIN: 3 Q Why do you believe that? 4 A Because having seen the faxes that you 5 asked me about earlier where I was obtaining a rep 6 letter from Mr. Furman in July of 2000, I don't 7 believe I would have had a conversation with him 8 after July of 2000. 9 Q Okay. 10 A And I can't explain the context of this 11 discussion on September 25th, but it strikes me as 12 one that would have occurred in that time frame in 13 1999. 14 Q Okay. Well, the last entry on that 15 page, is that "Howard"? "Howard will let know"? 16 A That's not ringing a bell. 17 Q Okay. You don't recall a Howard being 18 involved in the transaction? 19 A I don't. 20 Q Okay. Turning the page to 1286, 21 please. 22 A Okay.</p>	<p style="text-align: right;">Page 157</p> <p>1 no substantial authority"; is that right? 2 A That appears to be what it says, yes. 3 MR. STERN: "With" or "it"? 4 THE WITNESS: It appears to say, 5 "Penalty only if no substantial authority." 6 BY MR. COFFIN: 7 Q "If no substantial authority." 8 And then you list "Conservative, 9 average, or aggressive," and then to the side it 10 says "Prudently aggressive." 11 Do you recall what those notes were 12 regarding? 13 A No. I don't know whether that refers 14 to Midcoast or Enbridge or something else. I 15 don't know. 16 Q Is the discussion of the penalty in 17 relation to the chance that the government would 18 challenge the transaction? 19 A I think -- I don't know that that's 20 what I had in mind when I jotted that down, but 21 obviously penalties arise only when you are 22 challenged by the government, so.</p>

40 (Pages 154 to 157)

Witness: Gary Wilcox

<p style="text-align: right;">Page 158</p> <p>1 Q And then below that it says "140,000";</p> <p>2 is that right? "\$140,000 Fortrend actually paid,"</p> <p>3 and then what does it say below that?</p> <p>4 A "I don't know if Fortrend got money</p> <p>5 from Langley."</p> <p>6 Q Do you know what that -- those two</p> <p>7 notes were regarding?</p> <p>8 A I am not for certain, but I believe</p> <p>9 that might refer to a working capital adjustment</p> <p>10 Fortrend had to pay. But I -- I don't think it's</p> <p>11 referring to Fortrend's -- the payment that</p> <p>12 Fortrend received in connection with the butcher</p> <p>13 interest. I believe this is something else.</p> <p>14 Q And at the top there where it says,</p> <p>15 "Has been request to supply with copies of</p> <p>16 opinion," was that a request made by Midcoast or</p> <p>17 by somebody else?</p> <p>18 MR. TURKUS: Objection to the form of</p> <p>19 the question.</p> <p>20 A I testified earlier that I believe this</p> <p>21 was a request made by Enbridge in connection with</p> <p>22 its acquisition of Midcoast.</p>	<p style="text-align: right;">Page 160</p> <p>1 wrote that?</p> <p>2 A Again, it's very difficult to testify</p> <p>3 as to what was in my mind on September 10, 1999,</p> <p>4 but I believe having been informed that there was</p> <p>5 a phone call between E&Y, PwC, and Fortrend made</p> <p>6 in late August, that these notes were referring to</p> <p>7 that phone call.</p> <p>8 Q Okay. The bottom of the page and on to</p> <p>9 the next page, could you read the beginning at the</p> <p>10 bottom where it says "Seller"?</p> <p>11 A Looks like, "Seller asking for</p> <p>12 incremental consideration equal to one-half a</p> <p>13 step-up."</p> <p>14 Q Is that referring to Langley, if you</p> <p>15 recall?</p> <p>16 A I don't recall, but I think it's fair</p> <p>17 to say if I write the word "seller," I'm referring</p> <p>18 to the seller and that would be Langley.</p> <p>19 Q Do you recall if Langley eventually got</p> <p>20 the incremental consideration equal to half its</p> <p>21 step-up?</p> <p>22 A I don't believe he -- I don't believe</p>
<p style="text-align: right;">Page 159</p> <p>1 BY MR. COFFIN:</p> <p>2 Q All right.</p> <p>3 A As part of their due diligence.</p> <p>4 Q 1287, which is the next page. On the</p> <p>5 entry in the middle of the page beginning with</p> <p>6 9/10, "Dennis M." Is that Dennis --</p> <p>7 A McErlean.</p> <p>8 Q -- McErlean?</p> <p>9 And then read the next entry there,</p> <p>10 beginning "Tom Palmisano."</p> <p>11 A "Tom Palmisano, seller conferred with</p> <p>12 E&Y, risk to seller, seller/buyer call, on</p> <p>13 structure, plugged in Fortrend."</p> <p>14 Q Do you know what that was in regards</p> <p>15 to?</p> <p>16 MR. TURKUS: Are you asking him what he</p> <p>17 had in mind when he wrote that?</p> <p>18 MR. COFFIN: Yeah.</p> <p>19 MR. TURKUS: Or are you asking him to</p> <p>20 speculate about what he thinks it might mean?</p> <p>21 BY MR. COFFIN:</p> <p>22 Q What did you have in mind when you</p>	<p style="text-align: right;">Page 161</p> <p>1 he did. I really have no idea what -- I mean --</p> <p>2 Q Okay.</p> <p>3 A -- if you want me to testify more -- in</p> <p>4 more detail about the purchase price for the stock</p> <p>5 versus the purchase price for the assets, I can</p> <p>6 try to, but, beyond that, I don't know.</p> <p>7 Q All right. Do you recall if Langley</p> <p>8 was concerned at all about engaging in a Midco</p> <p>9 transaction?</p> <p>10 MR. STERN: Objection, form.</p> <p>11 MR. TURKUS: Objection, lack of</p> <p>12 foundation. Objection to the form of the</p> <p>13 question.</p> <p>14 What time are you asking this question?</p> <p>15 MR. COFFIN: Prior to entering into the</p> <p>16 transaction.</p> <p>17 MR. TURKUS: Same objections.</p> <p>18 A I don't recall specific concerns of</p> <p>19 Langley.</p> <p>20 BY MR. COFFIN:</p> <p>21 Q Okay. Do you recall general concern?</p> <p>22 A I don't recall general concerns. I</p>

41 (Pages 158 to 161)

Witness: Gary Wilcox

<p style="text-align: right;">Page 162</p> <p>1 recall that his accountants gained knowledge of 2 Fortrend's role as a purchaser of the stock. But 3 I don't -- I don't remember them expressing a 4 concern. 5 Q Okay. Look at the top, 1288. It says 6 "\$120 million"; is that correct? 7 A Yes. 8 Q And then the next entry, I assume it's 9 "Intermediary, 7 percent"; is that right? 10 A I believe that's what that refers to. 11 Q Okay. And says, "We get 15 percent." 12 Did that refer to PwC? 13 A I believe that does. 14 Q And then, "15-year pipeline"? 15 A I think that refers to the fact that 16 the pipeline's a 15-year depreciable asset. 17 Q Okay. Do you recall how that was 18 relevant to the figures above it? 19 MR. TURKUS: Objection to the form of 20 the question. 21 A First of all, I am not certain that 22 page 1288 is a continuation of the notes on page</p>	<p style="text-align: right;">Page 164</p> <p>1 A I believe that these were notes taken 2 in preparation of my initial trip to Kansas City 3 in early September. 4 BY MR. COFFIN: 5 Q Okay. Where it says on Item No. 3, 6 "Midco injects loss assets into corp, corp sells, 7 Midco takes risk," what is meant by "loss assets"? 8 A I'm only guessing as I'm sitting here 9 today and not saying what was in my head at the 10 time, but I think that refers to Midco 11 transferring high-basis assets into the 12 corporation that it purchased. Corporation sells 13 the assets and if those losses are not available, 14 that is Midco's risk, tax risk. 15 Q Do you know if that's what happened in 16 this transaction? 17 A I don't. As I said earlier, I don't 18 know what they did, if anything. I really don't. 19 Q Okay. Again, who is Bill G.? 20 A Bill Galanis. 21 Q And why was he consulted? 22 A Because I conferred with him all the</p>
<p style="text-align: right;">Page 163</p> <p>1 1287. 2 BY MR. COFFIN: 3 Q Okay. 4 A But I don't believe that there is a 5 connection between those, the bottom of 1287 and 6 the top of 1288. 7 Q Okay. And below that, some more notes. 8 Is that "Bill" -- "Bill G."? 9 A Yes. 10 Q Who is Bill G.? 11 A Bill Galanis [phonetic], partner at 12 PwC. 13 Q Which office? 14 A Washington. 15 Q And the notes that follow, were 16 those -- down to where it says "Ian"? 17 A Yes. 18 Q Were those notes taken in conjunction 19 with the Midcoast transaction, or are they related 20 to what you know about Midcoast in general? 21 MR. TURKUS: Objection to the form of 22 the question.</p>	<p style="text-align: right;">Page 165</p> <p>1 time. We were partners in the Washington M&A 2 group. 3 Q I assume above -- you see the first 4 bracket on the left there where the star is? 5 A Yes. 6 Q Does that say, "Ian not troubled by 7 indemnity," or is that "Dan"? 8 A I think that's, "Ian not troubled by 9 indemnities." 10 Q And down below, below the section 11 dealing with Ian where there's a straight line, 12 what's that word? Is it "patterns"? 13 A "Alternatives." 14 Q "Alternatives." And one, does that say 15 "sandwich"? 16 A Yes. 17 Q What is that referring to? 18 A That refers to a -- it's hard for me to 19 say at this point without really thinking through 20 what these words say, but sandwich referred to, in 21 common terms, referred to a transaction in which 22 the stock of a target corporation would be</p>

42 (Pages 162 to 165)

Witness: Gary Wilcox

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<p>1 exchanged in a tax-free transaction and the</p> <p>2 acquiring corporation would put cash into an LLC</p> <p>3 in which the target shareholder was the managing</p> <p>4 member. I don't know how that transaction would</p> <p>5 have applied here, but I was obviously thinking</p> <p>6 about various transaction structures.</p> <p>7 Q And then the next page at the top, Item</p> <p>8 No. 2, is that "partnership basis strip"?</p> <p>9 A Yes.</p> <p>10 Q Is that a tax structure? Does that</p> <p>11 describe a tax structure?</p> <p>12 MR. TURKUS: Objection to the form of</p> <p>13 the question.</p> <p>14 A In general terms, it describes a</p> <p>15 transaction in which a seller of assets drops the</p> <p>16 assets into a partnership, the buyer acquires an</p> <p>17 interest in the partnership, the partnership</p> <p>18 borrows against the assets, distributes the cash</p> <p>19 up to the seller and the seller defers the gain.</p> <p>20 BY MR. COFFIN:</p> <p>21 Q Were those two alternatives described,</p> <p>22 the sandwich and the partnership basis strip, were</p>	<p>1 Q Okay.</p> <p>2 A But I did not do the calculation.</p> <p>3 Q It says, "They want percentage of</p> <p>4 step-up."</p> <p>5 Do you recall who "they" was or were?</p> <p>6 A I believe that would have referred</p> <p>7 to -- "they" being -- "they" would refer to</p> <p>8 Fortrend.</p> <p>9 Q Okay. Then "An inside basis,</p> <p>10 50 million." Is that basis of the --</p> <p>11 A I don't know. I wrote it down but I</p> <p>12 can't say that it was.</p> <p>13 Q Do you recall how much Fortrend was</p> <p>14 eventually paid as far as percentage of step-up?</p> <p>15 MR. STERN: Objection, form.</p> <p>16 MR. TURKUS: Objection to the form of</p> <p>17 the question. Objection, lack of foundation.</p> <p>18 A First of all, the reference to</p> <p>19 percentage of step-up refers to the price</p> <p>20 differential between what Fortrend paid for the</p> <p>21 stock and what it sold the assets for. My best</p> <p>22 recollection is that Fortrend priced the asset</p>
Page 167	Page 169
<p>1 those alternatives communicated to Midcoast?</p> <p>2 MR. TURKUS: Objection to the form of</p> <p>3 the question.</p> <p>4 A I really don't recall if they were or</p> <p>5 not.</p> <p>6 BY MR. COFFIN:</p> <p>7 Q Okay. Turn to 1291, please. PwCP1291?</p> <p>8 A Okay.</p> <p>9 Q Was this one of the drawings you said</p> <p>10 that was not yours?</p> <p>11 A No. This looks like mine.</p> <p>12 Q Okay. Below the drawing it says,</p> <p>13 "step-up." Is it 105 million?</p> <p>14 A That's what it looks like.</p> <p>15 Q They want percentage of step-up, inside</p> <p>16 basis, 50 million?</p> <p>17 A Yes.</p> <p>18 Q Do you recall how the 105 million was</p> <p>19 calculated?</p> <p>20 A No. I mean, obviously a step-up is the</p> <p>21 difference between the purchase price for the</p> <p>22 assets and the current tax basis of those assets.</p>	<p>1 sale based on a differential approximately equal</p> <p>2 to 5 percent of the step-up.</p> <p>3 BY MR. COFFIN:</p> <p>4 Q Do you know if Midcoast was aware of</p> <p>5 that pricing structure?</p> <p>6 MR. STERN: Objection to form.</p> <p>7 MR. TURKUS: Objection to the form of</p> <p>8 the question. Objection, lack of foundation.</p> <p>9 A Like I said earlier, I believe that I</p> <p>10 had a conversation with Midcoast on September 13</p> <p>11 after I spoke with Fortrend and I'm fairly</p> <p>12 confident that I would have communicated the</p> <p>13 5 percent price differential to Midcoast at that</p> <p>14 time.</p> <p>15 BY MR. COFFIN:</p> <p>16 Q I apologize for asking you again. Turn</p> <p>17 to 1292, please. Was this -- did you take these</p> <p>18 notes pursuant to a conversation you had with</p> <p>19 Mr. Schacter on September 12?</p> <p>20 MR. TURKUS: Objection to the form of</p> <p>21 the question.</p> <p>22 A These are my notes, and it appears</p>

43 (Pages 166 to 169)

Witness: Gary Wilcox

<p style="text-align: right;">Page 170</p> <p>1 that I took them as part of a conversation with 2 Ian Schacter. 3 BY MR. COFFIN: 4 Q You think that would have occurred 5 September 12 of 1999? 6 A Yes. 7 Q Do you see the first bracket there on 8 the left side? 9 A Yes. 10 Q Could you read those four lines for me, 11 please? 12 A And again, I'm putting abbreviated 13 words into my own words at this point. 14 "We've had meeting of minds already, 15 risk is increased. If close to meeting, need to 16 introduce Midco as other buyer." 17 Keep going. 18 Q Please? 19 A "Continuing relationship equals more of 20 whisper than direct communication. Fortrend won't 21 accept any risks." 22 Q Okay. That's good.</p>	<p style="text-align: right;">Page 172</p> <p>1 Fortrend on September 13, I told them that this 2 transaction would have to be structured in a 3 certain way for us to be comfortable. I don't 4 recall what I said to them about taking on risks, 5 but I believe I've already testified that they did 6 take on certain risks such as the million dollar 7 risk over a 24-hour period as well as, I believe, 8 they had certain risks associated with their 9 status as a party to the stock purchase agreement 10 that were independent of Midcoast's obligations 11 under the asset agreement, and they were informed 12 that the transaction would have to be structured 13 in a certain way. But, beyond that, I don't 14 remember the details. 15 Q Okay. Farther down, about four entries 16 after the one we just talked about, where it says, 17 "If do RT"; is that right? "If do right," you see 18 that? 19 A Yes. 20 Q Okay. Read that for me as you would 21 interpret it today. 22 A I think that says, "If you do it right,</p>
<p style="text-align: right;">Page 171</p> <p>1 A Okay. 2 Q You recall discussing these matters 3 with Mr. Schacter? 4 MR. TURKUS: On this date, this 5 conversation? 6 MR. COFFIN: Yes, sir. 7 MR. TURKUS: As opposed to what the 8 note showed? Does he have an independent 9 recollection on that? I think that was a 10 yes. 11 A I have an independent recollection of 12 talking with Ian, but I don't have an independent 13 recollection of every point in these notes. 14 BY MR. COFFIN: 15 Q Do you recall discussing with 16 Mr. Schacter the "Fortrend won't accept any 17 risks"? 18 A I do not remember that. 19 Q Do you have any recollection of 20 discussing Fortrend, that they wouldn't accept any 21 risks? 22 A I believe that when I spoke with</p>	<p style="text-align: right;">Page 173</p> <p>1 more likely than not." 2 Q Okay. Turn to 1293, please. The 3 line -- the top third where it says "Ian." 4 A Yes. 5 Q Read those two lines, three lines. 6 A I think it says, "Ian should get to 7 5/6 percent, 5 then 1 PwC. PwC should act as 8 representative in negotiating price for buyer." 9 Q Is that what Mr. Schacter told you in 10 the last sentence? 11 MR. TURKUS: Objection to the form of 12 the question. 13 Are you asking him does he recall 14 having a conversation to that effect with 15 Mr. Schacter, or are you asking him to 16 speculate what he meant when he wrote these 17 notes? 18 MR. COFFIN: Does he recall. 19 A I don't recall Ian specifically telling 20 me that, but I believe in looking at these notes 21 as I sit here today that the reason why I wrote 22 down "Ian" before I said "Should get to 5 or</p>

44 (Pages 170 to 173)

Witness: Gary Wilcox

<p style="text-align: right;">Page 174</p> <p>1 6 percent," is because Ian said that. 2 BY MR. COFFIN: 3 Q Say that again. 4 A I don't recall Ian specifically saying 5 that, but I'm just trying to be helpful here. As 6 I sit here today, it would appear that Ian did 7 say, "Should get to 5 or 6 percent," because I 8 wrote that next to Ian's name. 9 Q And what did the 5 to 6 percent refer 10 to? 11 A I'm speculating at this point because 12 the only thing that makes sense to me is for that 13 to refer to the price differential that would be 14 charged by Fortrend. 15 Q Turn to 1295, please. Down at the 16 bottom. It says -- underneath the line that goes 17 across the page. See that? 18 A Yes. 19 Q Could you read that for me, please? 20 A Looks like it says, "First time they 21 talked with Fortrend attorney to attorney." 22 Then says, "Ian is not comfortable</p>	<p style="text-align: right;">Page 176</p> <p>1 witness's testimony. 2 BY MR. COFFIN: 3 Q And I know you said they paid it on 4 behalf of Midcoast; is that correct? 5 A Let me restate what I said earlier. 6 We were advised by Fortrend that their 7 practice in other transactions was to permit a 8 portion of the sales proceeds from the sale of 9 assets to be applied toward the payment of the 10 buyer's counsel's fees. And their practice in 11 other transactions was to permit a portion of 12 those fees equal to approximately 15 percent of 13 the price differential to be applied toward the 14 buyer's counsel's fees. 15 Our client was only Midcoast. Our fees 16 were to be paid by Midcoast, and these notes at 17 the bottom refer to the fact -- actually, are 18 consistent with what we've already gone through in 19 the engagement letter; that we would receive that 20 15 percent of the price differential only if 21 Midcoast, our client, directed Fortrend to 22 essentially, by wire transfer, I assume, send PwC</p>
<p style="text-align: right;">Page 175</p> <p>1 taking fee without disclosure to client and 2 directing Fortrend to pay us a portion." 3 Q Was it understood from the beginning 4 that Fortrend would pay the fee, Midcoast's fee to 5 PwC? 6 MR. TURKUS: Objection to the form of 7 the question. 8 What do you mean by "at the beginning"? 9 MR. COFFIN: When the details of the 10 transaction were being worked out. 11 MR. TURKUS: Objection to the form of 12 the question. Same objection. 13 MR. STERN: Could you restate that 14 question? 15 MR. COFFIN: Sure. 16 BY MR. COFFIN: 17 Q I guess I'll ask it this way: When was 18 it determined that Fortrend would pay PwC's fee? 19 MR. TURKUS: Objection to the form of 20 the question. 21 MR. STERN: Objection, form. 22 MR. TURKUS: It's inconsistent with the</p>	<p style="text-align: right;">Page 177</p> <p>1 a payment at Midcoast's direction. 2 Q Turn to 1297, please. Top says 3 "August 26th"; is that right? 4 A Yes. 5 Q And next to it, it says, "Steve Snyder 6 of Fortrend called." 7 Were you involved in that call? 8 A I said earlier that I believe there was 9 a call involving E&Y for Fortrend and PwC in late 10 August. I was not a part of that call. I believe 11 that this is simply my jotting down the fact that 12 that call took place. 13 Q All right. The first entry is that 14 note "tombstones"; is that what that says? 15 A I believe that's what that says. 16 Q What is meant by tombstones? 17 A "Tombstone" is a term commonly used for 18 an announcement, a public announcement of a 19 transaction. I don't remember why I wrote that 20 down. 21 Q Okay. The next entry, it says, 22 "Agree" -- is that "new standard dog and pony</p>

45 (Pages 174 to 177)

Witness: Gary Wilcox

<p style="text-align: right;">Page 178</p> <p>1 show"?</p> <p>2 A I believe so.</p> <p>3 Q Okay. Do you recall why you wrote that</p> <p>4 note?</p> <p>5 A I believe this was some notes I jotted</p> <p>6 down when I met with Langley's counsel on</p> <p>7 September 13 to discuss what would happen if</p> <p>8 Fortrend entered the bidding process as a</p> <p>9 potential stock purchaser.</p> <p>10 Q So you're saying that these notes were</p> <p>11 written prior to your meeting with Langley on</p> <p>12 December 13?</p> <p>13 A I believe it was written --</p> <p>14 MR. TURKUS: Objection to form of the</p> <p>15 question.</p> <p>16 A I believe it was a meeting with</p> <p>17 Langley's counsel. I don't recall if Langley was</p> <p>18 present.</p> <p>19 BY MR. COFFIN:</p> <p>20 Q Okay. Go to 1299, please. Is this a</p> <p>21 continuation of notes taken on the prior page,</p> <p>22 1299?</p>	<p style="text-align: right;">Page 180</p> <p>1 A Again, I don't know what I was thinking</p> <p>2 at the time, but I think we all know now what</p> <p>3 "boss" refers to. It was a transaction that the</p> <p>4 IRS has listed.</p> <p>5 BY MR. COFFIN:</p> <p>6 Q You don't recall how that -- if that</p> <p>7 relates to the Midcoast transaction at all?</p> <p>8 A I don't think it related at all to the</p> <p>9 Midcoast transaction. I don't know why I jotted</p> <p>10 that down.</p> <p>11 MR. TURKUS: Can I ask if we can go off</p> <p>12 the record for a moment?</p> <p>13 MR. COFFIN: Sure.</p> <p>14 (Whereupon, there were discussions off</p> <p>15 the record.)</p> <p>16 BY MR. COFFIN:</p> <p>17 Q Go to 1303, please. At the bottom of</p> <p>18 the page, there's a note that says, "When go to</p> <p>19 LOI" -- I assume that's the letter of intent --</p> <p>20 "need" -- what's the rest of that statement?</p> <p>21 A I don't know what that means. It looks</p> <p>22 like -- I don't know if it's "ask" or "advance."</p>
<p style="text-align: right;">Page 179</p> <p>1 A It appears to be.</p> <p>2 Q It appears the second note on that page</p> <p>3 says -- is that "now" or "knew"? Read that for</p> <p>4 me, would you, please?</p> <p>5 A That appears to say, "Now" -- I don't</p> <p>6 understand why, but it appears to say, "Now, a</p> <p>7 condition to closing, buyer get opinion, whether</p> <p>8 PwC or Ernst."</p> <p>9 Q Do you recall -- I assume buyer -- I'm</p> <p>10 sorry. The buyer in that regard would be Midcoast</p> <p>11 or Fortrend, or do you recall?</p> <p>12 A I don't recall.</p> <p>13 Q Okay.</p> <p>14 MR. TURKUS: Objection to the form of</p> <p>15 the question.</p> <p>16 BY MR. COFFIN:</p> <p>17 Q Down at the bottom of that page, it</p> <p>18 says "boss"; is that correct?</p> <p>19 A Yes.</p> <p>20 Q What is that in reference to?</p> <p>21 MR. TURKUS: Objection to the form of</p> <p>22 the question.</p>	<p style="text-align: right;">Page 181</p> <p>1 Q -- "of \$50,000."</p> <p>2 Do you recall if there was some kind of</p> <p>3 a request for a \$50,000 advance?</p> <p>4 A I believe this was referring to whether</p> <p>5 Midcoast would have to pay Fortrend 50,000 up</p> <p>6 front to sign the letter of intent to the purchase</p> <p>7 of assets. But, as I recall, it wasn't required.</p> <p>8 This was just a discussion of whether it might be</p> <p>9 required.</p> <p>10 Q 1306, please. About five or six lines</p> <p>11 down, it says, "Better" -- is that, "Better with</p> <p>12 us"?</p> <p>13 A That appears to be what it says, but I</p> <p>14 can't explain it.</p> <p>15 Q "Better with us. Agreed that</p> <p>16 Fortrend's bid has to be greater than 5 million."</p> <p>17 Is that what it says?</p> <p>18 A That's what it says.</p> <p>19 Q Any recollection of what that meant?</p> <p>20 A No. I will speculate today that it</p> <p>21 refers to the bid that Fortrend makes on the</p> <p>22 purchase of stock as being more than 5 million</p>

46 (Pages 178 to 181)

Witness: Gary Wilcox

<p style="text-align: right;">Page 182</p> <p>1 relative to something else. 2 Q All right. Turn to 1307, please. 3 There's an entry there in the middle, "Craig 4 Hoffman, 9/17"? 5 A Yes. 6 Q And below that, there's a note that 7 begins with, "Two ways." Could you read 1 and 2 8 for me, please? 9 A Appears to say, "Two ways: 1, Fortrend 10 sets up, engages accounting firm later and pays 11 premium. Second" -- I don't know what this says. 12 "Second" -- looks like "RD, pay as finder's fee." 13 Q Then below that? 14 A That appears to say, "No engagement 15 letter with firm based on verbal understanding." 16 Q Back on 1307 where it says, "No 17 engagement letter with firm based on verbal 18 understanding," was that -- is it your 19 understanding, your recollection that that meant 20 between PwC and Fortrend? 21 MR. TURKUS: You're asking him what he 22 had in mind when he wrote it down, or are you</p>	<p style="text-align: right;">Page 184</p> <p>1 I'm going to ask you: Do these notes on the 2 bottom with -- looks like you had law conversation 3 with Bob Whitten; is that correct? 4 A I believe that's correct. 5 MR. TURKUS: Objection to the form of 6 the question. 7 A I believe that Bob W. refers to Bob 8 Whitten. 9 BY MR. COFFIN: 10 Q Okay. 11 MR. TURKUS: The question was: Was 12 this relating to a conversation with 13 Mr. Whitten? If you can recall. 14 A I believe, based on the way that I have 15 written Bob Whitten's name in my notes, that this 16 was a conversation with him. 17 BY MR. COFFIN: 18 Q And there's a reference there to 19 Circular 230; is that correct? 20 A I see the words, yes. 21 Q Okay. You recall Circular 230 being at 22 issue back in September of '99?</p>
<p style="text-align: right;">Page 183</p> <p>1 asking him what he thinks it might mean 2 today? 3 MR. COFFIN: What he had in mind when 4 he wrote it down. 5 A I think what I had in mind when I wrote 6 that down is that there is no engagement letter 7 between PwC and Fortrend. 8 BY MR. COFFIN: 9 Q Did that have something to do with the 10 payment of the fee? 11 MR. TURKUS: Objection to the form of 12 the question. 13 A As I've said, Fortrend told us they had 14 a practice of permitting a portion of their sales 15 proceeds to be paid to buyer's counsel. This is 16 referring to that understanding; that if that 17 happened, it would not be pursuant to any 18 engagement letter between PwC and Fortrend and it 19 would, while it's not written there, it would be 20 at the buyer's direction. 21 BY MR. COFFIN: 22 Q Turn to 1308, PwC1308 at the bottom.</p>	<p style="text-align: right;">Page 185</p> <p>1 MR. TURKUS: Objection to the form of 2 the question. 3 At issue for whom about what? What are 4 you asking? 5 MR. COFFIN: Well, I'm asking why is he 6 discussing -- why is he writing down 7 "Circular 230" here. 8 MR. TURKUS: Objection to the form of 9 the question. 10 A I can't explain why I wrote it down 11 other than it's pretty obvious that it was 12 discussed in some way. 13 Do you have a more specific question 14 for me about that? 15 BY MR. COFFIN: 16 Q Was there a concern that -- what does 17 Circular 230 say? 18 A You've got to be kidding me. Is that 19 really your question? 20 Q Yeah. 21 MR. TURKUS: Today you want to know 22 what Circular 230 means? Just let me --</p>

47 (Pages 182 to 185)

Witness: Gary Wilcox

<p style="text-align: right;">Page 186</p> <p>1 MR. COFFIN: Just in general, what does 2 it say? 3 MR. TURKUS: What does it say today or 4 what did it say in 1999? And how can the 5 witness really be expected to recall in 6 detail that? 7 MR. COFFIN: I didn't ask in detail; I 8 said in general. 9 MR. TURKUS: Do you want to know what 10 it says today or what it said in 1999? 11 MR. COFFIN: In '99 in general. 12 MR. TURKUS: Objection to the form of 13 the question. 14 A I need to understand why the government 15 is asking me personally about Circular 230 in a 16 case about a corporate taxpayer. I just need to 17 understand. 18 BY MR. COFFIN: 19 Q Well, you wrote it down in the notes, 20 that's why I'm asking you. 21 A I need to understand why it's relevant 22 to your --</p>	<p style="text-align: right;">Page 188</p> <p>1 page. Do you see that? 2 A Yes. 3 Q What does that say below that? 4 A "Probably do cap loss generator." 5 Q What is a cap loss generator? 6 MR. TURKUS: Do you mean generally what 7 is a cap loss generator, or do you mean what 8 do the words mean in these notes? 9 MR. COFFIN: What do the words mean in 10 these notes? 11 MR. TURKUS: If you recall. 12 A I don't recall why that statement is in 13 these notes. 14 BY MR. COFFIN: 15 Q Go to 1320, please. The bottom of the 16 page, 9/30, Tom P.; is that correct? 17 A Yes. 18 Q Read those lines there, after that. 19 A "Agree with GBW, not made clear. On 20 Fortrend side only makes sense re percentage of 21 gain shelter. Step-up equals purchase price over 22 basis. Dan T. happy re lower rate."</p>
<p style="text-align: right;">Page 187</p> <p>1 Q It's in the notes. 2 A -- to this particular case. 3 Q It's in the notes; that's why it's 4 relevant. 5 A I agree it's in the notes. 6 Q Okay. 7 A I wrote it down. 8 Q So tell me about that. 9 A What more do you need to know? 10 Q I need to know how it applied to this 11 case, the facts of this case. 12 MR. STERN: Objection to form. 13 MR. TURKUS: Objection to the form of 14 the question. If you can recall. 15 A It appears from these notes that 16 Circular 230 is being discussed because Bob 17 Whitten and I are determining whether there are 18 any issues based on a proposal to Midcoast that we 19 be paid based on extraordinary value. 20 BY MR. COFFIN: 21 Q Go to 1310, please, where it says 22 "Dennis M. and Bob W." in the top third of the</p>	<p style="text-align: right;">Page 189</p> <p>1 Q What are you referring to when you talk 2 about gain shelter; do you recall? 3 A Well, because I'm referring to 4 Fortrend, I assume that it refers to the gain 5 Fortrend will recognize on the sale of the assets. 6 Q Okay. 7 A As I've said, I have no idea how or 8 whether they sheltered that gain. 9 Dan T., I don't -- I believe that is 10 someone at -- was someone at Midcoast. 11 Q And the 1322, please. The top, there's 12 an entry there, 10/4, Tom P. Read that first line 13 for me, please. 14 A "Richard Robert. Why not beat down 15 fee?" 16 Q Do you recall -- let me back up. 17 Would this note have been taken 18 pursuant to a conversation with Mr. Palmisano? 19 A I believe so. 20 Q Do you recall if Mr. Palmisano was 21 communicating to you a request by Mr. Robert? 22 MR. TURKUS: Objection to the form of</p>

48 (Pages 186 to 189)

Witness: Gary Wilcox

<p style="text-align: right;">Page 190</p> <p>1 the question.</p> <p>2 Is the question whether he's, sitting</p> <p>3 here today he recalls that, or whether that's</p> <p>4 what he interprets this note to mean?</p> <p>5 MR. COFFIN: His interpretation.</p> <p>6 MR. TURKUS: So you're not asking him</p> <p>7 whether he recalls it; is that right?</p> <p>8 MR. COFFIN: Right.</p> <p>9 A My interpretation of this, because I</p> <p>10 wrote down "Richard Robert" before this statement,</p> <p>11 that it refers to a comment that Richard Robert</p> <p>12 made to Tom Palmisano.</p> <p>13 BY MR. COFFIN:</p> <p>14 Q Do you recall discussing with</p> <p>15 Mr. Palmisano a comment regarding this statement</p> <p>16 that would be made by Mr. Robert?</p> <p>17 MR. TURKUS: Do you mean independent of</p> <p>18 these notes does he have such a recollection?</p> <p>19 MR. COFFIN: Yes.</p> <p>20 A Well, I think we just agreed that I was</p> <p>21 going to answer the question based on what it</p> <p>22 appears to me. How it appears to me today, I</p>	<p style="text-align: right;">Page 192</p> <p>1 A No.</p> <p>2 Q Do you recall who the lender may have</p> <p>3 been?</p> <p>4 A No. I said no.</p> <p>5 Q Oh, I'm sorry.</p> <p>6 MR. STERN: Are you about to wrap up</p> <p>7 so I can ask my questions?</p> <p>8 MR. COFFIN: Yeah. Give me ten more</p> <p>9 minutes.</p> <p>10 MR. STERN: Okay.</p> <p>11 BY MR. COFFIN:</p> <p>12 Q Do you recall Mr. Hardy having</p> <p>13 concern -- where it says "concern of lender out of</p> <p>14 ordinary tax advantage," do you recall Mr. Hardy</p> <p>15 expressing that concern to you?</p> <p>16 MR. TURKUS: Objection to the form of</p> <p>17 the question.</p> <p>18 Independent of the notes; is that what</p> <p>19 you're asking?</p> <p>20 MR. COFFIN: Yes.</p> <p>21 A I don't remember a concern for</p> <p>22 Mr. Hardy independent of my notes. I do see in my</p>
<p style="text-align: right;">Page 191</p> <p>1 don't recall having this specific conversation</p> <p>2 with Tom Palmisano.</p> <p>3 BY MR. COFFIN:</p> <p>4 Q Okay. Go to 1326, please. There's an</p> <p>5 entry at the top, 10/16, T. Hardy [phonetic]. It</p> <p>6 says, "Represent lender to Midcoast"?</p> <p>7 A Yes.</p> <p>8 Q Did you have a conversation with</p> <p>9 somebody who represented the lender to Midcoast?</p> <p>10 MR. TURKUS: Objection to the form of</p> <p>11 the question.</p> <p>12 Are you referring to these notes or are</p> <p>13 you asking him whether he has an independent</p> <p>14 recollection of a conversation with a lender</p> <p>15 to Midcoast?</p> <p>16 MR. COFFIN: Independent recollection.</p> <p>17 A I do have an independent recollection</p> <p>18 of a conversation with T. Hardy who I believe was</p> <p>19 counsel to a potential lender.</p> <p>20 BY MR. COFFIN:</p> <p>21 Q Do you remember who the potential</p> <p>22 lender was?</p>	<p style="text-align: right;">Page 193</p> <p>1 notes that I wrote down concern that must have</p> <p>2 been reflecting my conversation with him, but I</p> <p>3 don't know what else to make of it.</p> <p>4 BY MR. COFFIN:</p> <p>5 Q Page 1324. 10/5 entry, Tom P. next to</p> <p>6 that. Does it say, "New push to get" -- could you</p> <p>7 read the rest of that for me, please?</p> <p>8 A "New push to get engagement letter with</p> <p>9 Fortrend. Need format."</p> <p>10 Q Okay. Independent of these notes, do</p> <p>11 you recall that there was a push to get an</p> <p>12 engagement letter with Fortrend?</p> <p>13 A I believe that refers to an engagement</p> <p>14 letter between Fortrend and Midcoast relating to</p> <p>15 the purchase of assets. I don't know why I wrote</p> <p>16 down "engagement letter," but I believe it</p> <p>17 referred to this -- these notes refer to a letter</p> <p>18 of intent between Fortrend and Midcoast.</p> <p>19 Q If you can go to 1339, please. At the</p> <p>20 top, it says "4:15 p.m."</p> <p>21 A Okay.</p> <p>22 Q Read those notes for me, please.</p>

49 (Pages 190 to 193)

Witness: Gary Wilcox

<p style="text-align: right;">Page 194</p> <p>1 A Okay.</p> <p>2 MR. TURKUS: That line?</p> <p>3 MR. COFFIN: Yes, just that segment.</p> <p>4 A Again, I am reading the words in full</p> <p>5 even though they appear abbreviated. "S" --</p> <p>6 "Steve Korb suggested that instead of indemnity,</p> <p>7 Fortrend indemnify Dennis if Bishop treated as</p> <p>8 selling assets and then liquidating. Told him</p> <p>9 that if recast as sale of assets by Bishop in</p> <p>10 hands of Dennis, Fortrend wouldn't be able to use</p> <p>11 its losses to offset gain."</p> <p>12 BY MR. COFFIN:</p> <p>13 Q You were aware at the time that</p> <p>14 Fortrend would have losses to offset gain?</p> <p>15 A No. As I've said, I'm not aware how or</p> <p>16 whether Fortrend was able to offset its gain. I</p> <p>17 think this was purely based on an assumption or a</p> <p>18 speculation that they might have losses.</p> <p>19 Q I hand you what's been marked as</p> <p>20 Government Exhibit 205. Is this an article that</p> <p>21 you authored?</p> <p>22 A Yes.</p>	<p style="text-align: right;">Page 196</p> <p>1 BY MR. COFFIN:</p> <p>2 Q How are you sure about that?</p> <p>3 MR. TURKUS: Objection to the form of</p> <p>4 the question.</p> <p>5 That's not what he said.</p> <p>6 MR. COFFIN: Okay. Well, let me clear</p> <p>7 that up.</p> <p>8 MR. TURKUS: Don't misstate what the</p> <p>9 witness says.</p> <p>10 MR. COFFIN: I'm sorry.</p> <p>11 MR. TURKUS: He said, "In particular,</p> <p>12 I'm not sure."</p> <p>13 MR. COFFIN: Okay. All right. You</p> <p>14 okay?</p> <p>15 MR. TURKUS: Yeah.</p> <p>16 MR. COFFIN: Good.</p> <p>17 MR. TURKUS: And if you don't</p> <p>18 mischaracterize the witness's answers, I'll</p> <p>19 be much better.</p> <p>20 MR. COFFIN: Thank you.</p> <p>21 BY MR. COFFIN:</p> <p>22 Q Does this article set forth an analysis</p>
<p style="text-align: right;">Page 195</p> <p>1 (Whereupon, there were discussions off</p> <p>2 the record.)</p> <p>3 BY MR. COFFIN:</p> <p>4 Q You refer in your article to viral</p> <p>5 stock; is that correct?</p> <p>6 A Yes.</p> <p>7 Q And you also refer to shelters that,</p> <p>8 similarly, involve the transfer of high-basis</p> <p>9 assets to an entity in a purported tax-free</p> <p>10 transaction followed by a sale of the interest in</p> <p>11 the entity.</p> <p>12 Do you know if viral stock was used in</p> <p>13 the -- used by Fortrend in this transaction?</p> <p>14 MR. STERN: Objection to form.</p> <p>15 MR. TURKUS: Objection to the form of</p> <p>16 the question. Asked and answered over and</p> <p>17 over and over.</p> <p>18 A No, I do not know how or whether</p> <p>19 Fortrend offset the gain in this transaction.</p> <p>20 And, in particular, I'm not aware that they used</p> <p>21 viral stock.</p> <p>22</p>	<p style="text-align: right;">Page 197</p> <p>1 of how viral stock is used in tax shelter</p> <p>2 transactions?</p> <p>3 MR. TURKUS: Objection to the form of</p> <p>4 the question.</p> <p>5 MR. STERN: I agree. Objection.</p> <p>6 A No. This -- well, this article</p> <p>7 explains how viral stock was used in the long-term</p> <p>8 capital transaction and then compares the</p> <p>9 long-term capital decision and the Black & Decker</p> <p>10 decision in a broader context of similar kinds of</p> <p>11 transactions, in particular, the -- well,</p> <p>12 that's -- I'll leave it at that.</p> <p>13 BY MR. COFFIN:</p> <p>14 Q Were you aware of lease strip and viral</p> <p>15 stock concepts back in 1999?</p> <p>16 MR. TURKUS: Objection to the form of</p> <p>17 the question.</p> <p>18 A No, I don't believe I was.</p> <p>19 BY MR. COFFIN:</p> <p>20 Q When did you become familiar with those</p> <p>21 concepts?</p> <p>22 MR. TURKUS: Objection to the form of</p>

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<p style="text-align: right;">Page 198</p> <p>1 the question.</p> <p>2 A When I worked for the government.</p> <p>3 BY MR. COFFIN:</p> <p>4 Q When you worked for the IRS, do you</p> <p>5 recall having a meeting with the IRS chief</p> <p>6 counsel's office regarding intermediary</p> <p>7 transactions?</p> <p>8 MR. TURKUS: Objection to the form of</p> <p>9 the question.</p> <p>10 A In what context?</p> <p>11 BY MR. COFFIN:</p> <p>12 Q You recall having a meeting with other</p> <p>13 chief counsel lawyers wherein this specific</p> <p>14 transaction was discussed?</p> <p>15 MR. TURKUS: What specific transaction?</p> <p>16 MR. COFFIN: The Midcoast transaction.</p> <p>17 MR. TURKUS: The Midcoast transaction?</p> <p>18 MR. COFFIN: Um-hum.</p> <p>19 A I don't believe. Can you give me some</p> <p>20 specifics and I'll try to remember?</p> <p>21 BY MR. COFFIN:</p> <p>22 Q Do you recall having a meeting where</p>	<p style="text-align: right;">Page 200</p> <p>1 MR. TURKUS: That's okay.</p> <p>2 (Whereupon, there was a break from</p> <p>3 4:43 p.m. until 4:48 p.m.)</p> <p>4 BY MR. COFFIN:</p> <p>5 Q Just one more question.</p> <p>6 Go to 1347, please, of Government</p> <p>7 Exhibit 201. And that diagram there, Mr. Wilcox,</p> <p>8 is that your handwriting?</p> <p>9 A Yes.</p> <p>10 MR. COFFIN: Okay. Pass the witness.</p> <p>11 EXAMINATION BY COUNSEL FOR THE ENBRIDGE PLAINTIFFS</p> <p>12 BY MR. STERN:</p> <p>13 Q Mr. Wilcox, you understand I'm</p> <p>14 representing the Enbridge plaintiffs in this</p> <p>15 proceeding?</p> <p>16 A Yes.</p> <p>17 Q All right. I've got a few questions to</p> <p>18 ask you and I may cover some ground that</p> <p>19 Mr. Coffin's already covered. I'll ask you to be</p> <p>20 patient with me, but I'm trying to flesh some</p> <p>21 things out.</p> <p>22 First of all, could you just give us</p>
<p style="text-align: right;">Page 199</p> <p>1 Ms. Yvonne Peters was present at the meeting</p> <p>2 discussing this Midco transaction?</p> <p>3 MR. TURKUS: You keep flipping back and</p> <p>4 forth, Mr. Coffin. Do you mean this</p> <p>5 transaction or Midco transactions generally?</p> <p>6 MR. COFFIN: I said Midcoast.</p> <p>7 MR. TURKUS: No, you said Midco.</p> <p>8 MR. COFFIN: No, I didn't.</p> <p>9 MR. TURKUS: Yes, you did. Look at the</p> <p>10 record.</p> <p>11 MR. COFFIN: I said the Midcoast</p> <p>12 transaction.</p> <p>13 MR. TURKUS: No, that's not what you</p> <p>14 said. So please rephrase the question.</p> <p>15 BY MR. COFFIN:</p> <p>16 Q Do you recall having a meeting with</p> <p>17 Mrs. Yvonne Peters present?</p> <p>18 MR. TURKUS: Want to take a break?</p> <p>19 MR. COFFIN: Yes, sir.</p> <p>20 MR. TURKUS: You want a break?</p> <p>21 MR. COFFIN: Yeah. Just a two-minute</p> <p>22 break.</p>	<p style="text-align: right;">Page 201</p> <p>1 a -- at the time, you know, in September of 1999</p> <p>2 when you became involved with the Midcoast</p> <p>3 transactions, can you describe for us in a general</p> <p>4 sense your experience in advising parties to</p> <p>5 mergers and acquisition transactions regarding tax</p> <p>6 issues? Just give me a general description of</p> <p>7 your experience. If you were trying -- if you</p> <p>8 were trying to -- if you were trying to explain to</p> <p>9 somebody like Midcoast why they should retain you</p> <p>10 in a transaction of this type, give me the</p> <p>11 highlights of your experience.</p> <p>12 A That I specialize in advising taxpayers</p> <p>13 on tax aspects of mergers and acquisitions, in</p> <p>14 particular, how to structure various taxable and</p> <p>15 nontaxable transactions. And, you know, I don't</p> <p>16 know what I'd say other than I had many years of</p> <p>17 experience, including years of experience at a</p> <p>18 national office level where I've seen a number of</p> <p>19 different kinds of transactions. And I'm not sure</p> <p>20 what more I would add. I generally am not</p> <p>21 comfortable trying to gloat about my own</p> <p>22 experience, so I'm pretty -- I find that difficult</p>

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Witness: Gary Wilcox

<p style="text-align: right;">Page 202</p> <p>1 to go on and on about that.</p> <p>2 Q Okay. Fair enough.</p> <p>3 At some point you did join the IRS in</p> <p>4 some capacity, right?</p> <p>5 A Yes.</p> <p>6 Q And what was that?</p> <p>7 A It was a deputy chief counsel</p> <p>8 technical. So I was in charge of -- my direct</p> <p>9 responsibility was to be in charge of the</p> <p>10 technical positions and the service, in</p> <p>11 particular, the technical positions that are set</p> <p>12 forth in published guidance, regulations,</p> <p>13 readings, and the like.</p> <p>14 Officially, I was the principal deputy</p> <p>15 of the chief counsel, so I was second in charge of</p> <p>16 the chief counsel's office.</p> <p>17 Q And what is the chief counsel's office?</p> <p>18 A Chief counsel's office is an office of</p> <p>19 approximately 1,500 attorneys made up of both</p> <p>20 national office attorneys at 1111 Constitution</p> <p>21 who --</p> <p>22 Q What is 1111 Constitution?</p>	<p style="text-align: right;">Page 204</p> <p>1 Q That are essentially implementing those</p> <p>2 technical positions?</p> <p>3 A Well, they are. They represent the IRS</p> <p>4 in the tax court. They advise revenue agents in</p> <p>5 connection with audits. They advise appeals.</p> <p>6 They work with the attorneys in the national</p> <p>7 office that help develop technical positions and</p> <p>8 guidance. And, for the most part, the attorneys</p> <p>9 in the field who are associated with the operating</p> <p>10 division reported to the other deputy who, at the</p> <p>11 time, was Emily Parker.</p> <p>12 Q So the chief counsel and below the</p> <p>13 chief counsel there are two deputies?</p> <p>14 A Two deputies. I was the technical</p> <p>15 deputy. Emily was the deputy chief counsel in</p> <p>16 charge of operations. But there was one principal</p> <p>17 deputy, and that was me.</p> <p>18 Q Okay. And when you talk about</p> <p>19 technical positions, those are policy positions</p> <p>20 that are issued by the IRS?</p> <p>21 A Well, it could be a legal position of</p> <p>22 the IRS in a case, or it could be a legal position</p>
<p style="text-align: right;">Page 203</p> <p>1 A 1111 Constitution is the headquarters</p> <p>2 of the IRS. That's where the commissioner's</p> <p>3 office is, that's where the chief counsel's office</p> <p>4 is. About half of the 1,500 chief counsel</p> <p>5 attorneys work out of that building. The other</p> <p>6 half work in various offices throughout the</p> <p>7 country. And many of the attorneys who -- well,</p> <p>8 in fact, most of the chief counsel attorneys who</p> <p>9 work at the national headquarters building</p> <p>10 reported to me because they were within the</p> <p>11 associate offices, and the associate offices are</p> <p>12 divided by technical specialties such as</p> <p>13 corporate, international, pass-throughs. And they</p> <p>14 are the attorneys primarily in charge of</p> <p>15 developing technical positions in service.</p> <p>16 The other attorneys, like several of</p> <p>17 the attorneys in this room, are assigned to</p> <p>18 operating -- they're assigned to advise the</p> <p>19 operating divisions of the Service, whether it's</p> <p>20 LMSB or SPD and, for the most part, they are</p> <p>21 located in various IRS offices throughout the</p> <p>22 country.</p>	<p style="text-align: right;">Page 205</p> <p>1 of the IRS that was to be implemented in published</p> <p>2 guidance. So I attended many briefings of actual</p> <p>3 cases because I was concerned about the technical</p> <p>4 position of the Service.</p> <p>5 Q Jumping back to the Midcoast</p> <p>6 transaction. As I understand it, you became</p> <p>7 involved in mid September of 1999, and you</p> <p>8 provided advice to Midcoast regarding tax aspects</p> <p>9 of the transaction; is that right?</p> <p>10 MR. TURKUS: Objection to the form of</p> <p>11 the question.</p> <p>12 BY MR. STERN:</p> <p>13 Q Is that right?</p> <p>14 A Yes.</p> <p>15 Q And ultimately your firm issued an</p> <p>16 opinion to Midcoast in connection with that</p> <p>17 transaction?</p> <p>18 A That is correct.</p> <p>19 MR. STERN: Let me mark this Wilcox</p> <p>20 Exhibit 1.</p> <p>21 (Whereupon, Wilcox Exhibit No. 1 was</p> <p>22 marked for identification.)</p>

52 (Pages 202 to 205)

Witness: Gary Wilcox

<p style="text-align: right;">Page 206</p> <p>1 BY MR. STERN:</p> <p>2 Q Can you identify Wilcox Exhibit 1?</p> <p>3 A This is an opinion from PwC to</p> <p>4 Midcoast.</p> <p>5 Q Is that the opinion that we just were</p> <p>6 talking about, the opinion that PwC issued in</p> <p>7 connection with the Midcoast transaction?</p> <p>8 A Yes.</p> <p>9 MR. TURKUS: Just for the record, I</p> <p>10 think he's talking about pages PwCP1246</p> <p>11 through 1248 and not page 1245.</p> <p>12 MR. STERN: Fair enough.</p> <p>13 BY MR. STERN:</p> <p>14 Q Mr. Wilcox, the first page of Exhibit 1</p> <p>15 to your deposition is a cover letter from you to</p> <p>16 Mr. Robert transmitting to Mr. Robert the actual</p> <p>17 opinion which is the second through fourth page of</p> <p>18 the exhibit; is that right?</p> <p>19 A Correct.</p> <p>20 Q Now, the actual opinion is in the third</p> <p>21 to last paragraph on the last page of Exhibit 1 to</p> <p>22 your deposition; is that right?</p>	<p style="text-align: right;">Page 208</p> <p>1 the question.</p> <p>2 BY MR. STERN:</p> <p>3 Q What's the basis of your opinion?</p> <p>4 MR. COFFIN: I said leading.</p> <p>5 A This is an opinion that PwC was willing</p> <p>6 to issue based on --</p> <p>7 BY MR. STERN:</p> <p>8 Q Let me ask you the question --</p> <p>9 A Okay.</p> <p>10 Q -- in a different way.</p> <p>11 On what is that opinion based?</p> <p>12 A It is based on the transaction</p> <p>13 documents, the representation letters provided</p> <p>14 from Midcoast and Fortrend, whatever additional</p> <p>15 information that we obtained in connection with</p> <p>16 our role in this transaction, and our analysis of</p> <p>17 the applicable law.</p> <p>18 Q And Mr. Coffin took you through and</p> <p>19 showed you various e-mails and notes that were</p> <p>20 generated during the course of the, I guess, the</p> <p>21 negotiations of the transaction, e-mails that you</p> <p>22 participated in either as an author or recipient.</p>
<p style="text-align: right;">Page 207</p> <p>1 A That is correct. The actual opinion</p> <p>2 language is on page 3.</p> <p>3 Q And that actual opinion language is</p> <p>4 that, "Based upon and subject to the foregoing as</p> <p>5 well as limitations set forth below, we are of the</p> <p>6 opinion that it is more likely than not that</p> <p>7 immediately after the consummation of the</p> <p>8 purchase, the acquired assets in the aggregate</p> <p>9 will have for federal income tax purposes a tax</p> <p>10 basis in the hands of Midcoast equal to the cost</p> <p>11 to Midcoast of such acquired assets as determined</p> <p>12 in accordance with Section 1012 of the Internal</p> <p>13 Revenue Code of 1986 as amended."</p> <p>14 Is that right?</p> <p>15 A That is right.</p> <p>16 Q And that was the opinion that PwC was</p> <p>17 willing to provide after your participation in the</p> <p>18 transaction as the tax advisor and your review of</p> <p>19 the various materials that are described in the</p> <p>20 opinion letter?</p> <p>21 MR. COFFIN: Objection.</p> <p>22 MR. TURKUS: Objection to the form of</p>	<p style="text-align: right;">Page 209</p> <p>1 You recall that?</p> <p>2 A Yes.</p> <p>3 Q So you had knowledge of the subject</p> <p>4 matter of those e-mails at the time that you</p> <p>5 forwarded this opinion to Midcoast?</p> <p>6 A Yes.</p> <p>7 Q And if we could look on the third page</p> <p>8 of the exhibit, second page of the actual opinion</p> <p>9 letter -- it's Bates stamped PwCP1247 -- there's a</p> <p>10 reference under the numbered paragraphs to</p> <p>11 representation letters from Midcoast and Fortrend.</p> <p>12 You see that?</p> <p>13 A Yes.</p> <p>14 Q And if we could pull them out of</p> <p>15 your -- if we could pull them out of your</p> <p>16 notebooks, 189, Government Exhibit -- no, excuse</p> <p>17 me. 176 and 195.</p> <p>18 What is Government Exhibit 176?</p> <p>19 A This appears to be a final</p> <p>20 representation letter from Fortrend to PwC.</p> <p>21 Q And do you understand that that's the</p> <p>22 representation letter that's referenced on the</p>

53 (Pages 206 to 209)

Witness: Gary Wilcox

<p style="text-align: right;">Page 210</p> <p>1 second page of the PwC opinion letter?</p> <p>2 A Yes, I believe it is.</p> <p>3 Q And did PwC rely on the representations</p> <p>4 by Fortrend in this letter in issuing its opinion?</p> <p>5 A Yes.</p> <p>6 Q Now, Mr. Coffin looked at some --</p> <p>7 various drafts that appeared to have been</p> <p>8 exchanged between PwC and Fortrend, first drafts</p> <p>9 of this letter. Do you recall that?</p> <p>10 A Yes.</p> <p>11 Q Were there certain factual matters that</p> <p>12 PwC was specifically requesting that Fortrend make</p> <p>13 representations regarding?</p> <p>14 A I'm sorry, can you repeat that?</p> <p>15 Q Fortrend wasn't making representations</p> <p>16 to you guys in a vacuum. Did you tell them the</p> <p>17 types of things that you needed from them?</p> <p>18 A I think I testified that prior to the</p> <p>19 closing of the transaction in November '99, I</p> <p>20 presented Craig Hoffman with a draft of a</p> <p>21 representation letter, asked him to look at it,</p> <p>22 comment on it, make additions, make deletions.</p>	<p style="text-align: right;">Page 212</p> <p>1 A That is correct.</p> <p>2 Q And was it unusual in your experience</p> <p>3 to have that kind of -- well, first of all, to</p> <p>4 request a representation letter from a party to a</p> <p>5 transaction that was not your client?</p> <p>6 A I've done many tax-free reorganizations</p> <p>7 in my career. In fact, I've co-authored the</p> <p>8 treatise, the B&A treatise on tax-free reorg, so I</p> <p>9 know that area well. It's quite common in that</p> <p>10 area to get representation letters from both</p> <p>11 parties to the transaction. There's always an</p> <p>12 acquiring company and there's always a target</p> <p>13 company. You get representations letters from</p> <p>14 each. Frankly, I had not done a so-called Midco</p> <p>15 transaction.</p> <p>16 Q Okay. Well, that wasn't my question.</p> <p>17 My question was: In the transactions that you've</p> <p>18 been involved in, is it unusual for you to request</p> <p>19 representation letters from a party that is not</p> <p>20 your client?</p> <p>21 A It is not unusual and it is quite</p> <p>22 common in the context of transactions to ask</p>
<p style="text-align: right;">Page 211</p> <p>1 And as we've seen through some of the faxes,</p> <p>2 there were changes that were made by Fortrend.</p> <p>3 So I think I'm answering your question,</p> <p>4 yes, we did ask Fortrend to review what we</p> <p>5 believed were the appropriate facts that we needed</p> <p>6 them to confirm.</p> <p>7 Q All right. And they actually came back</p> <p>8 and provided you with some input on whether or not</p> <p>9 they could provide the representation using the</p> <p>10 same things that you submitted to them?</p> <p>11 A Yes, they did come back to us with</p> <p>12 input and comments.</p> <p>13 Q And that process led to a document that</p> <p>14 apparently you could live with and they could live</p> <p>15 with, Exhibit 176, Government Exhibit 176?</p> <p>16 MR. TURKUS: Objection to the form of</p> <p>17 the question.</p> <p>18 BY MR. STERN:</p> <p>19 Q Let me put it this way: Ultimately</p> <p>20 that process led to a letter that they were</p> <p>21 willing to sign and you were willing to accept as</p> <p>22 a basis for your opinions?</p>	<p style="text-align: right;">Page 213</p> <p>1 representation -- ask for a representation letter</p> <p>2 from a nonclient.</p> <p>3 Q And in those instances in your</p> <p>4 experience where you so asked for representation</p> <p>5 letters from a nonclient, is it unusual to have</p> <p>6 some give and take on the wording of the letter?</p> <p>7 A No, it's actually quite common because</p> <p>8 any time any party is asked to certify as to a</p> <p>9 statement of facts, they generally take it</p> <p>10 seriously and that there is almost always some</p> <p>11 give and take on the actual language that's used.</p> <p>12 Q Based on your interactions with</p> <p>13 Fortrend, was there anything that suggested to you</p> <p>14 that they were not taking their representation</p> <p>15 letters seriously?</p> <p>16 A No. The answer is no.</p> <p>17 Q We can look at Exhibit 195. Can you</p> <p>18 tell us what Exhibit 195 is, Government</p> <p>19 Exhibit 195?</p> <p>20 A This is a final representation letter</p> <p>21 from Midcoast to PwC.</p> <p>22 Q All right. And to be specific, there's</p>

54 (Pages 210 to 213)

Witness: Gary Wilcox

<p style="text-align: right;">Page 214</p> <p>1 a cover fax from Mr. Palmisano to you and then 2 attached is the actual rep letter beginning on the 3 second page, PwCP1256 through 1269, correct? 4 A Correct. 5 Q All right. And is this letter from 6 Midcoast the Midcoast representation letter that's 7 referred to in the second page of the PwC opinion 8 letter marked as Wilcox Exhibit -- 9 A Yes. 10 Q -- 1? 11 A Yes. 12 Q Can you describe for us how the rep 13 letter from Midcoast was prepared? I mean, who 14 actually put together the wording in the 15 description of the statement of facts and then the 16 specific representations that were made by 17 Midcoast? 18 A The process was similar to the process 19 we went through with Fortrend. I mean, we, PwC, 20 prepared a draft of this letter and presented it 21 to Midcoast, asked Midcoast to review it 22 carefully, make comments. As I recall, there were</p>	<p style="text-align: right;">Page 216</p> <p>1 that? Is that consistent with your memory? 2 A I don't have any reason to disagree 3 with that. I do note that the memorandum was 4 dated mid December and it's possible that it 5 reflects only the version of the statement of 6 facts that existed at that time. There might have 7 been subsequent changes before the opinion was 8 finalized, but I don't know without comparing the 9 two. 10 Q Okay. To the extent you participated 11 in the Midcoast transaction as an advisor, a tax 12 advisor to Midcoast, you and others at PwC, did 13 you become aware -- I assume you became aware of 14 transaction documents and events surrounding -- 15 some events surrounding the negotiation of the 16 transaction? 17 MR. TURKUS: Objection to the form of 18 the question. 19 BY MR. STERN: 20 Q Go ahead. 21 A As tax advisors to Midcoast in a 22 several hundred million dollar transaction that</p>
<p style="text-align: right;">Page 215</p> <p>1 comments. But that, to me, that was quite common 2 because, in fact, in every other transaction I'd 3 ever been involved with where there were 4 representation letters, the attorneys prepared the 5 initial draft. 6 Q Okay. Who prepared the initial draft 7 here? 8 A Well, I said the attorneys. I believe 9 that PwC prepared the initial draft of the 10 Midcoast representation letter. 11 Q We saw earlier Mr. Coffin took you 12 through Exhibit 160 which is the draft memorandum 13 which had a statement of background facts. 14 Do you recall that? 15 A Yes. 16 Q And I'm not going to ask you to compare 17 it, but the documents speak for themselves, and it 18 appears to me that the background facts in the 19 memorandum marked Government Exhibit 160 is very 20 similar, in many respects identical, to the 21 statement of facts in the Midcoast rep letter. 22 Have you any reason to disagree with</p>	<p style="text-align: right;">Page 217</p> <p>1 was extraordinarily complicated, we were very 2 involved throughout the process advising them on 3 structural and tax issues in connection with the 4 transaction. 5 Q If there was anything in this 6 representation letter that was inconsistent with 7 your understanding of either the transaction or 8 the events surrounding the negotiation of the 9 transaction, would you have raised either 10 objections or comments with Midcoast as you worked 11 with Midcoast to develop this representation 12 letter? 13 A Absolutely. I mean, the statement of 14 the facts obviously was intended to reflect an 15 accurate picture of what happened. Our opinion, 16 frankly, is only as good as the facts and the law 17 it relies on and absolutely it was my objective 18 for the statement of facts to be accurate and to 19 disclose all the relevant facts, whether they 20 could be construed as favorable or unfavorable. 21 Q And if we look at your notes marked 22 Government Exhibit 201, and on page 1276 there was</p>

55 (Pages 214 to 217)

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<p style="text-align: right;">Page 218</p> <p>1 a list of favorable facts and on page 1277 there 2 was a list of unfavorable facts. You recall that? 3 A Yes. 4 Q And you were aware of both the 5 favorable list and the unfavorable list at the 6 time PwC issued its opinion? 7 A Yes. 8 MR. TURKUS: I was just asking if that 9 was a question. 10 A Well, I was aware that I had written in 11 my notes favorable facts and unfavorable facts. I 12 think it's also fair to say I was just aware as a 13 substantive matter when this opinion was issued 14 what the favorable facts and what the unfavorable 15 facts were and -- 16 BY MR. STERN: 17 Q Let me ask it a different way. I think 18 that's a good qualification. 19 To the extent we had this list on page 20 1276 and 1277, Government Exhibit 201, you were 21 aware of all those items that were listed on those 22 two pages at the time you issued your opinion?</p>	<p style="text-align: right;">Page 220</p> <p>1 A Midcoast was already a client of PwC, 2 the Houston office. Tom Palmisano and Bob Whitten 3 were already involved in providing tax advice to 4 Midcoast. 5 Q To your knowledge, had Fortrend or any 6 of its affiliates ever been a client of PwC's? 7 A No. I'm not aware that they -- they 8 certainly were not a client at the time I was 9 involved in this transaction, and I'm not aware 10 that they were ever a client. 11 Q Did you or anyone else at PwC, to your 12 knowledge, act on behalf of Fortrend or its 13 affiliates in connection with the Midcoast 14 transaction? 15 A No, not in any way. I mean, Fortrend 16 acted through its principals, it acted through its 17 attorneys, and other than a few conversations with 18 Fortrend, I really did not have that much -- not 19 much involvement with them directly. Frankly, I 20 dealt mostly with their attorneys once the 21 transaction got under way. 22 Q Let me shift gears and talk about</p>
<p style="text-align: right;">Page 219</p> <p>1 A Absolutely. I think -- well, yes, 2 absolutely. 3 Q As you participated in the transaction 4 as a tax advisor, did you interact with Midcoast 5 and Fortrend and their respective advisors, did 6 anyone ever suggest to you that Fortrend, or any 7 Fortrend affiliate, was acting as an agent for 8 Midcoast? 9 A No, no one ever suggested anything like 10 that, and I'm not aware of any facts that would 11 suggest that they were an agent of Midcoast. 12 Q Did anyone ever suggest to you, or did 13 you ever observe anything that suggested to you 14 that Fortrend or its affiliates were in some other 15 capacity acting on behalf of Midcoast in 16 connection with this transaction? 17 A No. No authority was given by Midcoast 18 to anyone at Fortrend to act on their behalf, 19 verbally or in writing. 20 Q And just so we're clear, did PwC, what 21 was its relationship with Midcoast at the time you 22 became involved in September of 1999?</p>	<p style="text-align: right;">Page 221</p> <p>1 Government Exhibit 189. And Exhibit 189, I 2 believe you identified earlier as a memorandum 3 from you and Bob Whitten to the Midcoast tax 4 files; is that right? 5 A Yes. 6 Q And this memo relates to -- well, what 7 does -- hold on. In the third paragraph, you and 8 Mr. Whitten wrote, "For the reasons explained 9 below, there is a good argument that the Midcoast 10 transaction is not the same or substantially 11 similar to the transaction described in Notice 12 2001-16." 13 What was Notice 2001-16? 14 A It was the notice whereby the IRS 15 listed intermediary transactions or described 16 intermediary transactions as a listed transaction. 17 And I'm using the phrase "intermediary 18 transactions" in the same manner that the IRS 19 referred to that term. 20 Q It's term defined by the IRS? 21 A Well, can you point me to the notice? 22 I believe that was in the --</p>

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<p style="text-align: right;">Page 222</p> <p>1 Q 186. 2 A I believe that was in the title. That 3 is a term used by the IRS in its listing notice, 4 intermediary transactions. 5 Q All right. Going back to that 6 paragraph that I just read about the Midcoast 7 transaction not being the same or substantially -- 8 I'm sorry. 9 A Got it. 10 Q 189? 11 A Yes. 12 Q Back to that sentence that I read about 13 the Midcoast transaction not being the same or 14 substantially similar to the transactions 15 described in Notice 2001-16. Can you explain what 16 the significance of that conclusion by you and 17 Mr. Whitten was to Midcoast at that time? If it 18 had been the same or substantially similar, would 19 there have been some action required of Midcoast? 20 A Yes. I believe the action, if it were 21 the same or substantially similar, I believe that 22 Midcoast would have had an obligation to attach a</p>	<p style="text-align: right;">Page 224</p> <p>1 course of action." 2 What decision is he referring to -- are 3 you referring to when you refer to "our decision"? 4 A I don't recall exactly what I was 5 thinking at the time that language was used in 6 this memo. I do not that -- well, that I believe 7 PwC signed the tax returns for Midcoast. 8 So I think this was a situation where 9 there was both advice given to Midcoast as the 10 taxpayer as to what its obligations were and what 11 the risks to Midcoast were if it did not attach 12 this disclosure statement, as well as a decision 13 by PwC as return preparer to be comfortable with 14 this course of action. 15 Q And the course of action was not 16 attaching the disclosure statement, disclosing the 17 Fortrend transaction? 18 A Correct. 19 Q So that was a decision that PwC made as 20 tax preparer, is that right, in its capacity as 21 tax preparer? 22 A Well, you know, I don't know that I'm</p>
<p style="text-align: right;">Page 223</p> <p>1 disclosure statement to its next file tax return. 2 Q Was it PwC's opinion as of February 20, 3 2001, that Midcoast would not have to do that? 4 A It was PwC's view that -- and I'm using 5 the words in this memo -- that there was a good 6 argument that it wasn't required to do that or 7 there was an appropriate basis for not filing that 8 disclosure statement. 9 Q And do you know whether that conclusion 10 was communicated to Midcoast? 11 MR. TURKUS: Objection. Asked and 12 answered. 13 A I don't recall being part of that 14 communication. I believe that the communication 15 was made by Bob Whitten. 16 BY MR. STERN: 17 Q Well, if we look at the last paragraph 18 of Exhibit 189, it says, "We have discussed this 19 matter with Dan Mendelson of Risk Management in 20 Washington, D.C. Dan has confirmed that our 21 decision not to attach a disclosure statement on 22 the basis of the foregoing is an appropriate</p>	<p style="text-align: right;">Page 225</p> <p>1 in the best position to comment on that. I was 2 not involved with the preparation of the tax 3 return. 4 Q Was that Mr. Palmisano? 5 A Well, Palmisano and Whitten. 6 Q We're going talk to Mr. Palmisano. 7 A So I don't know, frankly, I should 8 clarify, what thinking they went through as return 9 preparers. I was just trying to respond to your 10 question about the reference to "our decision." I 11 was just trying to clarify that more was involved 12 here than simply giving advice to a client as to 13 the client's course of action because PwC was also 14 the return preparer. That's all I was saying. 15 Q So PwC as return preparer had to make 16 decisions about what it could and could not do or 17 should and should not do as return preparer? 18 A Presumably, yes. 19 Q All right. I'm going to look through 20 my notes. I may have some cats and dogs to ask 21 you about. 22 (Whereupon, there were discussions off</p>

57 (Pages 222 to 225)

Witness: Gary Wilcox

<p style="text-align: right;">Page 226</p> <p>1 the record.) 2 BY MR. STERN: 3 Q Let me jump back to Exhibit 160, 4 Government Exhibit 160. I'm looking at page 1 -- 5 excuse me, page 29 which is PwCP1140. And 6 specifically at the paragraph at the top of the 7 page. And I'm interested in from about two-thirds 8 of the way down, the sentence begins, "In any 9 event, had Midcoast gone bankrupt," on down to the 10 end of that paragraph. If you could read it and 11 let me know when you finish. 12 MR. COFFIN: What page is that, Karl? 13 MR. STERN: 29. 14 MR. TURKUS: 1140. 15 MR. COFFIN: Where on the page? 16 MR. TURKUS: The top paragraph. 17 A Okay. 18 BY MR. STERN: 19 Q You independently recall the risk to 20 K-Pipe as described in those sentences? 21 A I guess I independently remember 22 thinking about this risk in connection with all</p>	<p style="text-align: right;">Page 228</p> <p>1 affected its ability to borrow money the next day, 2 then Fortrend could conceivably be left, you know, 3 owning the entire business that it just purchased 4 and potentially not being able to pay back the 5 loan that it had just incurred to buy the stock. 6 As far as I remember, you know, the 7 closing of the stock deal was not conditioned on 8 the asset deal closing. There were no conditions 9 like that, as I remember. There was no absolute 10 assurance that the asset sale would occur the next 11 day. Parties might have expected it to occur, but 12 there was no absolute assurance that it would. 13 And if didn't, Fortrend could conceivably be at 14 risk for the company that it had just bought. And 15 in the real world, companies worry about that 16 risk, the overnight risk. And obviously we're 17 just making the point in the memo that that risk 18 was present here. 19 Q Was it a real risk? 20 A Well, who's to say it's real? I mean, 21 it's a theoretical real. It could be real, you 22 never know. But it's something that companies in</p>
<p style="text-align: right;">Page 227</p> <p>1 the other favorable factors as well as perhaps 2 some of the unfavorable factors. 3 Q Could you just describe for the Court 4 your understanding of this risk? 5 MR. TURKUS: The Court? You said 6 describe "for the Court." 7 MR. STERN: The Court is going to be 8 hearing this. 9 MR. TURKUS: But you guys have to agree 10 on whether this transcript is admissible. 11 Okay. Never mind. I withdraw my 12 objection. 13 MR. STERN: Well, if we agree. 14 MR. TURKUS: Nobody else objects. 15 Go right ahead. Answer the question. 16 A Companies worry about overnight risk of 17 terrorist incidents, acts of God, anything that 18 can happen that could expose them to risk and 19 prevent a transaction from happening. And 20 Fortrend's purchase of the stock occurred on one 21 day, Fortrend's sale of the assets occurred the 22 next day. If something happened to Midcoast that</p>	<p style="text-align: right;">Page 229</p> <p>1 the real world worry about. 2 I think there's another point in here 3 that it's not just the overnight risk; it's the 4 risk under the contract with Langley. I mean, 5 there were a number of covenants between Fortrend 6 and Langley associated with the purchase of the 7 stock that were not indemnified against or 8 guaranteed in any way, directly or indirectly, by 9 Midcoast or any affiliate of Midcoast. And, you 10 know, it's not as if Fortrend was able to walk 11 away completely from this transaction. It had 12 continuing obligations to Langley, it continued to 13 own assets, frankly, after the transaction. 14 Q And that brings up another point that I 15 wanted to ask you about. 16 If we jump to Government Exhibit 195, 17 which was the Midcoast representation letter, on 18 page 11 of that letter, which is PwCP1266 -- you 19 there with me? 20 MR. TURKUS: He is now. 21 BY MR. STERN: 22 Q Okay. The paragraph above the</p>

58 (Pages 226 to 229)

Witness: Gary Wilcox

<p style="text-align: right;">Page 230</p> <p>1 "Representation" heading --</p> <p>2 A Yes.</p> <p>3 Q -- says, "Several differences between</p> <p>4 the purchase price for the stock purchase and the</p> <p>5 purchase price for the asset purchase should be</p> <p>6 noted. First, the working capital adjustment paid</p> <p>7 by Fortrend to Langley was \$239,425 less than the</p> <p>8 working capital adjustment paid by Midcoast to</p> <p>9 Fortrend due to adjustments that affected a</p> <p>10 purchase of stock but not a purchase of assets,</p> <p>11 e.g., accrued income taxes."</p> <p>12 Could you explain that?</p> <p>13 MR. COFFIN: Objection, form.</p> <p>14 A I'm not sure I can explain this in</p> <p>15 detail. I think this statement was included in</p> <p>16 the statement of facts to illustrate the point</p> <p>17 that the purchase price paid under the stock</p> <p>18 purchase agreement by Fortrend was not just a, you</p> <p>19 know, a mirror image of the purchase price paid by</p> <p>20 Midcoast under the asset purchase agreement with</p> <p>21 only the difference being the so-called price</p> <p>22 differential; that they're inherent in the</p>	<p style="text-align: right;">Page 232</p> <p>1 Midcoast?</p> <p>2 A Correct. And it turns out, I guess, in</p> <p>3 this case as I read the language now, this</p> <p>4 operated to the benefit of Fortrend, but I don't</p> <p>5 know that that was assured. I think it just -- I</p> <p>6 don't recall the reasons why, you know, the amount</p> <p>7 Fortrend had to pay was less than the amount it</p> <p>8 received from Midcoast. I don't remember why.</p> <p>9 But the point was to illustrate there were</p> <p>10 differences.</p> <p>11 Q All right. And based on your work in</p> <p>12 this, in connection with this transaction, did</p> <p>13 Midcoast transact a stock purchase? Did Midcoast</p> <p>14 purchase stock from Langley?</p> <p>15 MR. COFFIN: Objection to form.</p> <p>16 A No, Midcoast certainly did not purchase</p> <p>17 stock from Langley.</p> <p>18 BY MR. STERN:</p> <p>19 Q What did Midcoast acquire in this</p> <p>20 transaction?</p> <p>21 MR. COFFIN: Objection to form.</p> <p>22 A Midcoast acquired various interests in</p>
<p style="text-align: right;">Page 231</p> <p>1 differences between the purchase of stock and the</p> <p>2 purchase of assets are differences in how purchase</p> <p>3 price is calculated.</p> <p>4 When you buy stock, you step in to all</p> <p>5 of the contingent liabilities associated with the</p> <p>6 business that are inside the corporation. When</p> <p>7 you buy assets, you get to pick and choose which</p> <p>8 liabilities to assume. And that right there</p> <p>9 created differences between adjustments to the</p> <p>10 purchase price.</p> <p>11 Like any transaction, these</p> <p>12 transactions had postclosing adjustments to the</p> <p>13 purchase price based on audits of the working</p> <p>14 capital and the like. And, you know, here we had</p> <p>15 a business that was purchased by Fortrend that</p> <p>16 Fortrend sold to Midcoast less the butcher</p> <p>17 interest and contingent claim, as I mentioned, but</p> <p>18 yet the adjustments to the purchase price was</p> <p>19 altered in different amounts being owed by the</p> <p>20 parties.</p> <p>21 Q Different amounts owed by Fortrend to</p> <p>22 Langley versus amounts owed between Fortrend and</p>	<p style="text-align: right;">Page 233</p> <p>1 partnerships that were owned by The Bishop Group</p> <p>2 Corporation.</p> <p>3 BY MR. STERN:</p> <p>4 Q Which was owned by --</p> <p>5 A The Bishop Group Corporation was</p> <p>6 purchased by Fortrend from Langley.</p> <p>7 Q And at the time of the --</p> <p>8 MR. STERN: Well, pass the witness.</p> <p>9 MR. COFFIN: Just one area to follow up</p> <p>10 on.</p> <p>11 EXAMINATION BY COUNSEL FOR THE GOVERNMENT</p> <p>12 BY MR. COFFIN:</p> <p>13 Q Mr. Wilcox, the tax opinion which was</p> <p>14 labeled Wilcox Exhibit No. 1, the transmittal</p> <p>15 letter from to you Mr. Robert is dated</p> <p>16 September 24, 2001, correct?</p> <p>17 A Correct.</p> <p>18 Q Let me back up.</p> <p>19 Was it customary for PwC to issue tax</p> <p>20 opinions in transactions, various corporate merger</p> <p>21 transactions?</p> <p>22 MR. TURKUS: Objection to the form of</p>

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Witness: Gary Wilcox

<p style="text-align: right;">Page 234</p> <p>1 the question.</p> <p>2 BY MR. COFFIN:</p> <p>3 Q Let me ask it this way: Was it an</p> <p>4 unusual event to issue a tax opinion on a</p> <p>5 particular transaction?</p> <p>6 MR. TURKUS: Objection to the form of</p> <p>7 the question.</p> <p>8 A No, it was not unusual to issue</p> <p>9 opinions to clients in connection with business</p> <p>10 transactions. As I said, I was heavily involved</p> <p>11 in issuing tax opinions in various tax-free</p> <p>12 reorganizations.</p> <p>13 BY MR. COFFIN:</p> <p>14 Q This opinion was issued September 24,</p> <p>15 2001, almost two years after the transaction</p> <p>16 occurred. Was it customary to issue tax opinions</p> <p>17 so far in the future?</p> <p>18 MR. STERN: Objection to form.</p> <p>19 MR. TURKUS: Objection to the form of</p> <p>20 the question, "so far in the future."</p> <p>21 MR. COFFIN: Yeah, almost two years</p> <p>22 after the transaction occurred.</p>	<p style="text-align: right;">Page 236</p> <p>1 the question.</p> <p>2 A I don't recall specifically. I mean,</p> <p>3 my memory is refreshed as to the efforts that we</p> <p>4 went to to secure a final representation letter</p> <p>5 from Fortrend, and I think it was in part, as I</p> <p>6 said, because Craig Hoffman left the company and I</p> <p>7 was having to deal with somebody else, Jeff</p> <p>8 Furman, and it just took a while to get him to</p> <p>9 focus and return comments. But it finally</p> <p>10 happened in July of 2000.</p> <p>11 I don't remember specifically other</p> <p>12 than I believe that we would have been waiting for</p> <p>13 Richard Robert to carefully review the</p> <p>14 representation letter we had provided him, and we</p> <p>15 were not going to issue the opinion until we were</p> <p>16 assured that he did review the representation</p> <p>17 letter and signed it. And I don't know. For</p> <p>18 whatever reason, we must not have received it from</p> <p>19 him.</p> <p>20 MR. COFFIN: No further questions.</p> <p>21 MR. STERN: I don't have anything else.</p> <p>22 MR. TURKUS: Thank you. Mr. Wilcox</p>
<p style="text-align: right;">Page 235</p> <p>1 MR. TURKUS: I wouldn't call that "in</p> <p>2 the future." Objection to the form of the</p> <p>3 question.</p> <p>4 A I'm not sure I can comment on that only</p> <p>5 because most of my experience prior to this</p> <p>6 transaction in issuing opinions was issuing</p> <p>7 opinions in transactions where the opinion was a</p> <p>8 condition to closing. Most tax-free reorgs, for</p> <p>9 example, the opinion is required to be issued at</p> <p>10 closing. Here there was no requirement that the</p> <p>11 opinion be issued at closing. The taxpayer, you</p> <p>12 know, had asked that PwC issue an opinion to it</p> <p>13 but there was no particular, you know, deadline</p> <p>14 imposed for issuing that opinion. Midcoast, you</p> <p>15 know, understood all along that if the transaction</p> <p>16 were properly structured, PwC would issue it, a</p> <p>17 more likely than not opinion that the transaction</p> <p>18 would be characterized as an asset purchase.</p> <p>19 BY MR. COFFIN:</p> <p>20 Q Why did it take almost two years to</p> <p>21 issue the tax opinion; do you recall?</p> <p>22 MR. TURKUS: Objection to the form of</p>	<p style="text-align: right;">Page 237</p> <p>1 will read an sign.</p> <p>2 (Signature having not been waived, the</p> <p>3 deposition of Gary Wilcox was concluded at</p> <p>4 5:44 p.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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1	ACKNOWLEDGMENT OF DEPONENT	1	CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2	I, Gary Wilcox, do hereby acknowledge	2	I, Sheri C. Stewart, the officer before
3	that I have read and examined the foregoing	3	whom the foregoing proceedings were taken, do
4	testimony, and the same is a true, correct	4	hereby certify that the foregoing transcript is a
5	and complete transcription of the testimony	5	true and correct record of the proceedings; that
6	given by me and any corrections appear on the	6	said proceedings were taken by me stenographically
7	attached Errata sheet signed by me.	7	and thereafter reduced to typewriting under my
8		8	supervision; and that I am neither counsel for,
9		9	related to, nor employed by any of the parties to
10	(DATE) (SIGNATURE)	10	this case and have no interest, financial or
11		11	otherwise, in its outcome.
12		12	IN WITNESS WHEREOF, I have hereunto set
13		13	my hand and affixed my notarial seal this 1st day
14		14	of March, 2007 .
15		15	My commission expires:
16		16	October 14, 2009
17		17	
18		18	
19		19	
20		20	NOTARY PUBLIC IN AND FOR
21		21	THE DISTRICT OF COLUMBIA
22		22	

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1	ERRATA SHEET
2	IN RE: Enbridge Energy Company, Inc., et al
3	v. United States of America
4	RETURN BY:
5	
6	PAGE LINE CORRECTION AND REASON
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